

[BASE CASE PROPOSAL]

[STANDARD FORM OF]

POWER PURCHASE AGREEMENT

between

DELMARVA POWER & LIGHT COMPANY

("Buyer")

and

[_____]

("Seller")

[Date]

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STANDARD FORM

POWER PURCHASE AGREEMENT

This Power Purchase Agreement ("Agreement") is made between Delmarva Power & Light Company, a Delaware corporation ("Buyer") and [____], a [____] ("Seller") as of [____]. Seller and Buyer are referred to individually as a "Party" or collectively as "Parties".

W I T N E S S E T H

WHEREAS, pursuant to the State of Delaware's Electric Utility Retail Customer Supply Act of 2006, and at the direction of the Delaware Public Service Commission (the "Commission"), the Director of the Office of Management and Budget, the Controller General and the Energy Office of the State of Delaware (collectively with the Commission, the "Agencies"), Buyer has solicited proposals for the construction of new electric generating resources within the State of Delaware to result in Buyer entering into a power purchase agreement to buy electric power (capacity, energy and ancillary services) to supply a portion of Buyer's Delaware Standard Offer Service ("SOS") customer requirements.

WHEREAS, Seller submitted a proposal to Buyer for the sale of Capacity and the associated Energy, Ancillary Services and Environmental Attributes from the Unit(s).

WHEREAS, at the direction of the Agencies, Buyer and Seller have negotiated the terms and conditions pursuant to which, subject to regulatory approvals and the satisfaction of other conditions precedent, Seller will sell to Buyer and Buyer will buy from Seller Capacity, Energy, Ancillary Services and Environmental Attributes.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and in the other Ancillary Agreements, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound and to bind their respective successors and assigns, the Parties do hereby mutually agree as follows;

ARTICLE I: GOVERNING TERMS

1.1 Definitions. As used in this Agreement, the following terms have the meanings set forth below:

"Additional Liquid Collateral" has the meaning set forth in Section 8.1(b).

"Affiliate" means, with respect to any Person, (i) each Person that, directly or indirectly, controls or is controlled by or is under common control with such designated Person, (ii) any Person that beneficially owns or holds 10% or more of any class or voting securities of such designated Person or 10% or more of the equity interest in such designated Person, and (iii) any Person of which such designated Person beneficially owns or holds 10% or more of any class of voting securities or in which such designated Person beneficially owns or holds 10% or more of the equity interest. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to

any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Affiliate Guarantee" shall mean an affiliate guarantee entered into by the Seller Guarantor in favor of Buyer covering all of Seller's obligations and liabilities hereunder after the Initial Delivery Date, subject to a limit of liability of \$200 per kW times the Guaranteed Capacity, in form and substance satisfactory to Buyer.

"Agencies" has the meaning set forth in the first recital hereto.

"Agreement" has the meaning set forth in the introductory paragraph hereto.

"Ancillary Agreements" means, individually or collectively, any Affiliate Guarantee, the Project Security Agreement, and each of the other agreements entered into by the Parties in connection herewith or therewith. [list others as applicable]

"Ancillary Services" means all products deemed to be "Ancillary Services" by PJM and FERC as of the Execution Date or a future date during the Contract Term, including but not limited to reactive power, regulation (including load following), spinning reserves, non-spinning reserves, and replacement reserves associated with the Unit(s) (as initially identified on Schedule 1 hereto).

"Authorized Representative" has the meaning set forth in Section 14.17

"Availability Adjustment" or "AA" has the meaning set forth in Section 4.1(b).

"British Thermal Unit" means the quantity of heat required to increase the temperature of one pound of water from 59°F to 60°F.

"Btu" means one British Thermal Unit.

"Business Day" means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. EPT.

"Buyer" means Delmarva Power & Light Company, a Delaware corporation.

"Buyer Group" has the meaning set forth in Section 11.1(a).

"Buyer's Schedule" has the meaning ascribed in Section 3.5(b)(iv).

"Capacity" means, as of any time, the maximum capability of the Unit(s) to generate electric energy measured in megawatts, after deduction for auxiliary loads and station electrical uses, including any variation in the form of capacity including installed capacity, locational capacity or similar products.

"Capacity Payment Rate" or "CPR" has the meaning set forth in Section 4.2(a)(i).

"Capacity Resource" means a generating unit or resource designated and committed by a Load Serving Entity to serve its obligation under the PJM RAA.

"Change of Control" means any transfer, sale, assignment, or other disposition of shares of or interests in Seller having the result (directly or indirectly and either immediately or subject to the happening of any contingency) of changing the entity or entities which ultimately possesses the power (directly or indirectly and either immediately or subject to the happening of any contingency) to direct or cause the direction of the management or policies of Seller (from the entity or entities possessing such power as to Seller as of the date of execution of the Agreement), whether such change is voluntary or involuntary on the part of Seller.

"Collateral" shall mean the Development Period Security, Minimum Liquid Collateral, Additional Liquid Collateral, the Affiliate Guarantee, the Project Security Agreement and any other collateral to be provided by Seller to Buyer pursuant to Article 8 (individually or collectively as the context requires).

"Collateral Requirement" has the meaning set forth in Section 8.1(b).

"Commercially Operable" with respect to any Unit, is a condition occurring after such time as all performance testing has been satisfactorily completed, Mechanical Completion has occurred, commissioning is complete, the Unit has demonstrated a net Capacity of not less than [95]% of the Guaranteed Capacity, the Unit is capable of regular commercial operation as reasonably determined by Buyer, and the Unit has been accepted as a Capacity Resource of PJM.

"Commercial Operation Date" the date on which each and every Unit of the Project has become Commercially Operable. The Commercial Operation Date shall be no earlier than [_____].

"Commission" has the meaning set forth in the first recital hereto.

"Contract Capacity" is the maximum MWs of Net Capability rated for the applicable summer or winter rating period that Seller is offering to make available to Buyer in each month of the Services Term, as set forth on Schedule 2.

"Contract Term" has the meaning set forth in Section 2.1.

"Contract Year" means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

"Credit Rating" means, with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by a Rating Agency, or if such entity does not have

a unsecured, senior long-term debt rating, then the rating assigned to such entity as its “issuer rating” by a Rating Agency.

“Critical Milestones” means each of (i) completion of the Permitting Milestone by not later than the Permitting Deadline, (ii) the execution and delivery of the Interconnection Agreement by not later than [date], (iii) closing of debt or other third party financing sufficient to cause the Unit(s) to achieve the Initial Delivery Date by not later than [date] (unless Seller demonstrates to Buyer’s reasonable satisfaction as of the Effective Date that it has equity financing sufficient to cause the Project to achieve the Initial Delivery Date), (iv) Seller’s issuance of unlimited notice to proceed under the EPC Contract by not later than [date], (v) clearing of the Site and ground breaking by not later than [date], (vi) completion of the Electrical Interconnection Facilities, all Transmission Upgrades and installation of the electrical metering and submetering as required pursuant to Section 5.2(a) by not later than [date] prior to the expected Initial Delivery Date, (vii) delivery at the Site of the major equipment comprising the Project’s power island by not later than [date], and (viii) achievement of Mechanical Completion by not later than [date]. [To be determined by the Parties on a project-specific basis.]

“Cure” has the meaning set forth in Section 8.2(a).

“Date Certain” has the meaning set forth in Section 5.4.

“Default Interest Rate” means the Interest Rate plus three percent (3%); provided, however, the Default Interest Rate shall never exceed the maximum rate permitted by applicable Law.

“Defaulting Party” has the meaning set forth in Section 12.1.

“Delay Damages” has the meaning set forth in Section 5.4.

“Delivery Point” of all Energy delivered pursuant to the Agreement shall be [Bidder to propose either (a) the Delmarva Zone or (b) the Interconnection Point].

“Delmarva Zone” means that aggregate of busses as listed on the PJM website and aggregated by Buyer.

“Design Capacity” means, for the Unit(s), the highest Capacity of the Unit(s) that can be reliably and safely made available on a sustained basis, as measured at the Delivery Point, at ISO Conditions, which is set forth as of the Execution Date in Appendix 1. **[Unit Contingent]**

“Development Period Security” has the meaning set forth in Section 8.1(a).

“Deviation Charges” has the meaning set forth in Section 3.5(d).

“Direct Claim” means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim.

“Disclosing Party” has the meaning set forth in Section 14.8.

“Disclosure Order” has the meaning set forth in Section 14.8.

“Eastern Prevailing Time” or “EPT” means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date.

“Early Termination Date” has the meaning set forth in Section 12.2(a).

“Effective Date” is a date on which the conditions precedent to the full effectiveness of this Agreement occur as set forth in Section 5.1.

“Electrical Interconnection Facilities” means the apparatus required to safely and reliably interconnect with and deliver the Products at the Guaranteed Capacity to the Delivery Point by means of the PJM Grid, including connection, transformation, switching, metering, communications, control, and safety equipment related thereto.

“Emergency” means (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (ii) a Fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce Fuel; or (iii) a condition that requires implementation of Emergency procedures as defined in the PJM Manuals.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours, net of auxiliary loads and station electrical uses (unless otherwise specified).

“Energy Rate” or “ER” shall have the meaning set forth in Section 4.2(a).

“Environmental Attributes” means “Renewable Energy Credits” and “Generation Attributes” of the Unit(s) that the Renewable Energy Credits represent (as both terms are defined by the Commission’s Rules and Procedures to Implement the Renewable Energy Portfolio Standard).

“EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor for the construction of the [Project][Unit(s)].

“EPC Contractor” means the engineering, procurement and construction contractor responsible for constructing the [Project][Unit(s)] pursuant to the EPC Contract.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other Laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“Equivalent Availability Factor” or “EAF” shall be determined in accordance with the formula set forth in PJM Manual 22: Generator Resource Performance Indices. **[Unit-Contingent for Facilities Other Than Intermittent Renewable Energy Facilities]**

“Event of Default” shall mean a Seller’s Event of Default and/or a Party’s Event of Default, as such terms are defined in Section 12.1.

“Excused Events” means either (i) the Buyer’s failure to provide for transmission service from

and after the Delivery Point, or (ii) a Force Majeure Event that is claimed by Buyer.

"Execution Date" shall mean the date first above written.

"FERC" means the Federal Energy Regulatory Commission, or any successor organization.

"FIN No. 46" has the meaning set forth in Section 5.1(e).

"Fitch" means Fitch Investors Service, Inc. or its successor.

"Force Majeure Event" shall mean any event or circumstance which wholly or partly prevents or delays performance of any obligations arising under this Agreement, but only if and to the extent such event or circumstance is beyond the reasonable control of, and not the result of the fault or negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to: (1) acts of God, including but not limited to landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather related events; (2) fire or explosions; (3) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Initial Delivery Date; (4) sabotage, riot, acts of terrorism, war and acts of public enemy; or (5) restraint by court order or other Governmental Authority.

Force Majeure Events shall not include: (i) a failure of performance of any Third Party, including any party providing electric transmission service or natural gas or other Fuel transportation, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure Event as defined above; (ii) economic hardship; (iii) lack of need for, or the availability of more favorable terms for the purchase or sale of, any Product during the Services Term; (iv) failure to timely apply for or obtain Permits; or (v) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure Event as defined above).

"Forced Outage" means any unplanned reduction or suspension of the electrical output from a Unit or unavailability of a Product in whole or in part from a Unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a Unit for operation, in whole or in part, for maintenance or repair that is not a Scheduled Maintenance Outage and not the result of a Force Majeure Event; provided that a PJM Maintenance Outage that is not also a Scheduled Maintenance Outage shall be a Forced Outage.

"Fuel" means Gas, coal and any other fuel used in connection with the operation of the Project, including fuel used to generate Energy and for consumption by the auxiliary equipment used in the operation of the Project.][If applicable]

"Fuel Interconnection Facilities" means the Fuel interconnection facilities required to safely and reliably deliver Fuel in volumes and at pressures sufficient to permit the Unit(s) to operate at the Guaranteed Capacity.][If applicable]

"GAAP" means generally accepted accounting principles in the United States of America in effect from time to time.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.

"Gas" means natural gas, which will be any mixture of hydrocarbons or of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.][If applicable]

"Good Utility Practices" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"Guaranteed Capacity" means the highest Contract Capacity specified by Seller for any month during the Services Term.

"Guaranteed Initial Delivery Date" means [] months after the Effective Date.

"Hazardous Substance" means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a "hazardous" or "toxic" substance or waste, or as a "contaminant" or "pollutant" or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls ("PCBs"), and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

"Indemnifiable Loss" means any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands (by any Person, including any Governmental Authority), assessments, judgments, settlements and compromises.

"Indemnitee" has the meaning set forth in Section 11.1(c).

"Indemnitor" has the meaning set forth in Section 11.1(c).

"Initial Capacity Test" is a test of the Unit(s)' capability to deliver Energy conducted prior to the Initial Delivery Date in accordance with the Test Procedures.

"Initial Delivery Date" means the date on or after the Effective Date on which the Seller's obligation to deliver the Products commences, and compensation for such Products payable by Buyer to Seller, begins to accrue.

"Instructed Operations" means (i) an Operational Order, (ii) a mandatory direction of PJM, or (iii) an action required pursuant to the PJM RAA to meet Emergencies and reliability needs including voltage support.

"Interconnection Agreement" shall mean the interconnection agreement to be entered into between Seller and [Buyer] for the interconnection of the Project to the Delivery Point.

"Interconnection Point" shall mean the PJM bus in the State of Delaware to which the Project is electrically connected, or the closest location thereto in the State of Delaware and monitored for Locational Marginal Price by PJM.

"Interest Rate" means the Prime Rate; provided, however, after the occurrence and during the continuation of an Event of Default by a Party, the Interest Rate applicable with respect to payments made by such Party shall be the Default Interest Rate, and provided further, that the Interest Rate shall never exceed the maximum rate permitted by applicable Law.

"ISO Conditions" means [59] degrees Fahrenheit and [60]% relative humidity.

"kWh" means one kilowatt of electric power over a period of one hour.

"kW" means kilowatt(s).

"Law" means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Contract Term; or any binding interpretation of the foregoing.

"Letter(s) of Credit" shall mean a letter of credit in the form of an irrevocable, transferable standby letter of credit from a Qualified Issuer, in form and substance satisfactory to Buyer.

"Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including, without limitation, any sale-leaseback arrangement, any conditional sale or other title retention agreement, and any financing lease having substantially the same effect as any of the foregoing.

"Load Serving Entity" means any entity (or the duly designated agent of such an entity), including a load aggregator or power marketer, (i) serving an end-user within the PJM Control Area, and (ii) that has been granted the authority or has an obligation pursuant to state or local Law, regulation or franchise to sell electric energy to end-users located within the PJM Control Area.

"Locational Marginal Price" means the hourly integrated market clearing marginal price for

Energy at the location the Energy is delivered or received.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner.

“Marked to Market Value” or “MtM Value” is an amount as defined in Section 8.1(b) and calculated in accordance with Appendix 2.

“Maximum Delay Damages” shall have the meaning set forth in Section 5.4.

“Mechanical Completion” means, as to the Unit(s), when, except for minor items of work that would not affect the safety and/or performance or operation of the Unit(s) and the Project such as painting, landscaping and so forth: (a) all materials and equipment required to be installed by the EPC Contractor for the Unit(s) have been installed, calibrated, loop checked and checked for alignment, lubrication, rotation and hydrostatic and pneumatic pressure integrity; (b) all systems required to be installed by the EPC Contractor have been installed and tested at significant loads; (c) such systems have been flushed and cleaned out as necessary; (d) all such equipment and systems have been fully operated in a safe and prudent manner at nominal ratings and have been installed in a manner that does not (i) void any subcontractor or vendor equipment, system or other warranties or (ii) violate any Permits; and (e) all systems required to be installed by the EPC Contractor and necessary for power generation are ready to commence testing and commissioning, the distributed control system for the Project is operational and the continuous emissions monitoring system has been installed.

“Milestone” shall mean any or each of the milestones forth in Schedule 3 relating to the construction, development, testing and operation of the Unit(s) and the Project.

“Minimum Liquid Collateral” has the meaning set forth in Section 8.1(b).

“MMBtu” means one million British Thermal Units.

“Monthly Construction Progress Report” means the report similar in form and content attached hereto as Appendix 3.

“Monthly Contract Capacity” or “MCC” means for the Unit(s) the lesser of Contract Capacity and the summer Net Capability rating of the Project in a specific calendar month during the Services Term, as determined by PJM.

“Monthly Fixed Payment” or “MFP” has the meaning set forth in Section 4.2(b).

“Monthly Payment Date” has the meaning set forth in Section 6.2.

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“Must-Run Generation” means generation designated by PJM to operate at a specific level and not available for dispatch.

"MW" means megawatts.

"MWh" means megawatt hour.

"NERC" means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.

"Net Capability" means, as of any time, the number of megawatts of Energy which can be delivered by the Unit(s), as determined under conditions and criteria specified in the PJM Manual for Rules and Procedures For Determination of Generating Capability (Manual M-21), as amended from time to time.

"Non-Defaulting Party" has the meaning set forth in Section 12.2.

"Notice" means a written communication which is delivered in the manner required by Section 14.1, as applicable to that communication.

"Notice of Claim" has the meaning set forth in Section 11.1(c).

"Operating Procedures" has the meaning set forth in Section 3.13.

"Operational Limitations" of a Unit are the parameters set forth in Appendix 1, describing the physical capabilities of the Unit, including the time required for start-up, the limitation on the number of scheduled start-ups per Contract Year and the minimum operating limits for the Unit(s).

"Operational Order" means a mandate issued by a Governmental Authority or PJM that the Seller has no discretion to ignore or avoid to offer or provide a Product or to Start-Up, Shut-Down, curtail or operate a Unit. An Operational Order would include, for example, a mandate issued by the U.S. Secretary of Energy to offer Capacity or Energy or to operate a Unit during an Emergency. In contrast, by way of further example, a legal obligation to test a Unit for the purpose of maintaining its Permits is not considered an Operational Order.

"Outage" means the partial or full unavailability or inability of a Unit to operate at 100% of its Contract Capacity due to a Forced Outage, Scheduled Maintenance Outage or Force Majeure Event, including any derating or inability to produce a Product (other than as disclosed in Appendix 1 as an Operational Limitation).

"Outage/Availability Notification Form" means the notice form attached to Appendix 4.

"Participating Transmission Owner" means an entity that (i) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities, and (ii) has transferred to the PJM operational control of such facilities and/or entitlements to be made part of the PJM Grid.

"Party" or "Parties" has the meaning set forth in the first paragraph of the Agreement.

"Party's Event of Default" has the meaning set forth in Section 12.1(b).

"Permit" means any permit, authorization, license, order, consent, waiver, exception, exemption, variance, or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with any Governmental Authority, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Unit(s) and the Project under any applicable environmental or other Law.

"Permitting Deadline" has the meaning set forth in Section 5.2(c).

"Permitting Milestone" has the meaning set forth in Section 5.2(c).

"Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

"PJM" means PJM Interconnection, LLC, or any successor organization thereto.

"PJM Agreements" means the PJM Tariff, PJM Operating Agreement, PJM RAA, PJM Manuals and any other applicable PJM bylaws, procedures, manuals or documents, or any successor, superseding or amended versions thereof that may take effect from time to time.

"PJM Control Area" means the control area recognized by NERC as the PJM Control Area.

"PJM Grid" means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under PJM's operational control.

"PJM Interchange Energy Market" means the regional competitive market administered by PJM for the purchase and sale of spot electric energy at wholesale in interstate commerce and related services in the PJM Operating Agreement.

"PJM Maintenance Outage" means a "Generator Planned Outage" as defined in the PJM RAA. A PJM Maintenance Outage that also meets the requirements of a Scheduled Maintenance Outage shall be deemed to be Scheduled Maintenance Outage, but shall otherwise be a Forced Outage.

"PJM Manual" or "PJM Manuals" means the instructions, rules, procedures and guidelines established by PJM for the operation, planning, and accounting requirements of the PJM Control Area and PJM Interchange Energy Market.

"PJM Member" means any entity satisfying the requirements of PJM to conduct business with PJM, including transmission owners, generating entities, load serving entities and marketers.

"PJM Operating Agreement" means the Operating Agreement of PJM or its successor, including superseding or amended versions of such operating agreement that may take effect from time to time.

"PJM RAA" means the Reliability Assurance Agreement, dated as June 2, 1997, as revised or amended, by and among Buyer and the other parties signatory thereto.

"PJM Tariff" means the PJM Open Access Transmission Tariff providing transmission service

within the PJM Control Area, as in effect from time to time, including any schedules, appendices or exhibits attached thereto.

"Prime Rate" means the rate of interest published by the Wall Street Journal as the prime lending rate or "prime rate", with adjustments in that varying rate to be made on the same day as any change in that rate is so published.

"Product" shall mean, collectively, Energy, Capacity, Ancillary Services, and Environmental Attributes.

"Project" means the electric generation facility described in Appendix 1, consisting of one or more Units committed to Buyer and the Site, Electrical Interconnection Facilities, the Fuel Interconnection Facilities and any other ancillary facilities, goods, equipment and real property associated with the Unit(s), and any and all other units (whether complete or under construction) which are owned, operated or controlled by Seller or any Affiliate of Seller and are located on the same Site or adjacent sites and/or use the same Electrical Interconnection Facilities and/or Fuel Interconnection Facilities; provided that for purposes of Section 3.1(d), a "Project" shall further include any electrical generating facilities that are deemed by any Governmental Authority to be part of the same facility or at the same location as the Unit(s) or that are directly or indirectly affected by the Project at which the Unit(s) are located.

"Project Permitted Liens" shall mean the Liens, encumbrances or security interests in the Project set forth on Schedule 4.

"Project Security Agreement" has the meaning set forth in Section 8.3 hereto.

"Qualified Issuer" means a U.S. commercial bank (or a foreign bank with a U.S. branch acceptable to Buyer) having total assets of at least \$10 billion and a senior unsecured long-term Credit Rating (unenhanced by third-party support) equivalent to A- or better as determined by S&P and the equivalent by Moody's or Fitch.

"Rating Agency" or "Rating Agencies" shall mean, individually or collectively, S&P, Moody's and Fitch.

"Recording" has the meaning set forth in Section 14.6.

"Regulatory Approval" shall consist of a final order of the Commission approving the terms of the Agreement without modification (including authorization by the Commission for Buyer to recover its costs incurred under the Agreement through its rates) and approval of the Agreement by each of the Agencies and other Governmental Authorities claiming jurisdiction over the Agreement.

"Regulatory Charges" has the meaning set forth in Section 9.2.

"Regulatory Charges Payment" has the meaning set forth in Section 9.2.

"Regulatory Disclosures" has the meaning set forth in Section 14.8.

“Renewable Energy Credits” or “RECs,” shall have the meaning set forth in the Commission’s Rules and Procedures to Implement the Renewable Energy Portfolio Standard.

“Renewable Energy Credits Rate” or “RR” has the meaning set forth in Section 4.2(a)(iii).

“Resource Adequacy Requirement” or “RAR” means a standard established and administered by the Commission and/or PJM or a successor control area operator, whereby unit-specific Capacity is identified and the physical unit is made available to PJM for dispatch; the eligibility to count Capacity toward the Resource Adequacy Requirement may be determined by identifying the full resource adequacy capability of specific Unit(s) or an amount of resource adequacy capability from partial or a combination of Unit(s).

“S&P” means Standard and Poor’s Ratings Group., a division of McGraw Hill, Inc., or its successor.

“Scheduled Availability Notices” has the meaning set forth in Section 3.5(b)(i).

“Scheduled Energy” means Energy generated in response to Scheduled Operations and delivered to Buyer at the Delivery Point for its account.

“Scheduled Maintenance” means removing the equipment, or any portion thereof, from service availability, in whole or in part, for inspection and/or general overhaul of one or more major equipment groups of the type that is (i) necessary to reliably maintain the Unit(s), (ii) cannot be reasonably conducted during Unit(s) operations, (iii) causes the available Capacity to be reduced to less than 100% of the Contract Capacity (as applicable for such month) and (iv) has been scheduled and Noticed in accordance with the requirements of Section 3.10.

“Scheduled Maintenance Outage” is the period in which Scheduled Maintenance is performed provided that only a period which has been Noticed and is otherwise in accordance with Section 3.10 shall be considered a Scheduled Maintenance Outage. A Scheduled Maintenance Outage may be a PJM Maintenance Outage, but not all PJM Maintenance Outages shall be deemed to be Scheduled Maintenance Outages. A PJM Maintenance Outage that is not also a Scheduled Maintenance Outage shall be a Forced Outage.

“Scheduled Operations” means operation of a Unit as required to satisfy Buyer’s Schedule or Instructed Operations.

“Scheduled Shut-Down” means a Shut-Down required by Scheduled Operations. Cessation of operations due to Outages or an action of Seller that is not required for Scheduled Operations is not a Scheduled Shut-Down.

“Seller” shall mean [_____], a [_____].

“Seller Credit Limit” shall have the meaning set forth in Section 8.1(b).

“Seller’s Deviation” shall have the meaning set forth in Section 3.5(d).

“Seller Guarantor” shall mean an Affiliate of Seller entering into an Affiliate Guarantee, which

Affiliate shall be satisfactory to Buyer.

“Seller Group” has the meaning set forth in Section 11.1(b).

“Seller’s Event of Default” has the meaning set forth in Section 12.1(a).

“Services Term” has the meaning set forth in Section 2.1.

“Settlement Amount” has the meaning set forth in Section 12.2(d).

“Shut-Down” means the action of causing the Unit(s) to cease producing Energy and/or Ancillary Services.

“Site” means the real property on which the Project is located, as identified in Appendix 1.

“Start-Up” means the action of causing a Unit to begin producing Energy and/or Ancillary Services from a state of no or zero production.

“Summer Month” means the calendar months of June, July, August and September.

“Tangible Net Worth” or “TNW” means a Person’s total assets (exclusive of intangible assets), minus that entity’s total liabilities, each as would be reflected on a balance sheet prepared in accordance with GAAP, and as of the relevant date of determination most recently filed with the United States Securities and Exchange Commission.

“Target Equivalent Availability Factor” shall mean each of the target Equivalent Availability Factors set forth in Section 4.1(a), as applicable. **[Unit-Contingent for Facilities Other Than Renewable Energy Facilities]**

“Termination Fee” has the meaning set forth in Section 5.4.

“Termination Payment” has the meaning used in Section 12.2.

“Test Procedures” has the meaning set forth in Section 3.12(b)(v).

“Tested Capacity” has the meaning set forth in Section in 3.12(b)(iii).

“Third Party” means a Person that is not a member of the Buyer Group or the Seller Group.

“Third Party Claim” means a claim, suit or similar demand by a Third Party.

“Third Party Payments” has the meaning set forth in Section 3.1(c).

“Transmission Upgrades” are any additions and/or reinforcements to an electric transmission system that are required as a result of the interconnection of the Unit(s) to that transmission system or an interconnected transmission system and/or to permit delivery of the Products into the electric transmission system at the Delivery Point safely and reliably, in the quantities and at the times at which delivery of such Products may be required under this Agreement, up to and including quantities that can be produced utilizing all of the Contract Capacity, including

upgrades to the network at points beyond the Interconnection Point.

“Unforced Capacity” or “UCAP” has the meaning set forth in the PJM RAA.

“Unit” means a generation unit described in Appendix 1 from which Seller has agreed to provide Products to Buyer pursuant to this Agreement.

“United States Bankruptcy Code” means title 11 of the United States Code.

“Winter Months” means the calendar months of December, January and February.

1.2 Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the meanings specified in Section 1.1; (b) the singular shall include the plural and vice versa; (c) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits hereof, unless otherwise specified; (d) all references to a particular Person in any capacity shall be deemed to refer also to such Person’s successors and permitted assigns in such capacity; (e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; (g) all accounting terms not specifically defined herein shall be construed in accordance with GAAP; (h) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (i) references to any agreement, document or instrument shall be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced as of such time; (j) the masculine shall include the feminine and neuter and vice versa; (k) references to a Law shall mean a reference to such Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (l) the term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins or ends; (m) words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings; and (n) all references to dollars are to U.S. dollars.

ARTICLE II

TERM

2.1 Term. The "Contract Term" will commence upon the Execution Date and, unless earlier terminated pursuant to this Article II, Article XII (Events of Default; Remedies), Article V (Conditions Precedent; Effective Date; Construction; and Initial Delivery Date), or any other provision hereof, will continue throughout the Services Term and until the date as of which all payment obligations arising under this Agreement, including any compensation for the Products, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly such as through set-off or netting) and the Collateral is released and/or returned as applicable. The Initial Delivery Date will occur, on or after the Effective Date, upon satisfaction of the conditions precedent set forth in Section 5.3. The "Services Term" is the period during which Seller is obligated to provide Products to Buyer commencing on the Initial Delivery Date and continuing for a period of [] years from the Initial Delivery Date unless earlier terminated pursuant to the terms of the Agreement.

2.2 Binding Nature. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under Section 5.1 (Conditions Precedent to Effective Date). Upon occurrence of the Effective Date, this Agreement shall be in full force and effect, enforceable and binding in all respects.

2.3 Failure of Timely Approvals. In the event that a final order of the Commission approving the terms of the Agreement without modification (including authorization by the Commission for Buyer to recover its costs reasonably incurred under the Agreement through its rates) and approval of the Agreement by each of the Agencies and other Governmental Authorities claiming jurisdiction over the Agreement do not occur within sixty (60) days of the Execution Date, either Party shall have the right to terminate this Agreement, without liability of one Party to the other, provided that such right is exercised by Notice received within thirty (30) days after such sixty (60) day deadline. If either Party terminates this Agreement in accordance with the above provisions of this Section 2.3, Buyer shall refund to Seller the full amount of the Development Period Security posted by Seller within ten (10) Business Days of such termination.

ARTICLE III

OBLIGATIONS AND DELIVERIES

3.1 Transaction.

(a) Purchase and Sale Obligation. During the Services Term, Seller shall sell and make available to Buyer and Buyer shall accept and pay in accordance with Section 4.2 and Article VI for [100]% of the Monthly Contract Capacity of each Unit and the right to receive [100]% the Products provided by the Unit(s), including those Products associated with Capacity in excess of the Monthly Contract Capacity, pursuant to the terms and conditions contained herein. With respect to any Ancillary Services created after the Execution Date, at the request of Buyer, Seller shall be required to provide such additional Ancillary Service to Buyer (a) to the extent the Ancillary Service can be provided by the Unit(s) without any material increase in Seller's operating or capital costs or decrease in Seller's revenues, or (b) if Buyer agrees to compensate Seller for the incremental costs or reduced revenues Buyer would not have incurred but for the provision of such Ancillary Services to the extent such Ancillary Services can only be provided by the Unit(s) with material costs and/or reduced revenues for Seller. Renewable Energy Credits included in the Products that may be purchased by Buyer pursuant to this Section 3.1(a) shall be subject to the maximum quantity limitations set forth on Schedule 5 hereto.

Deleted: [on a firm basis]

(b) Control. Subject to Buyer's rights to schedule the Unit(s) under Section 3.5(b), Seller shall at all times retain operational control of the Unit(s), be responsible for all operation and maintenance of the Units(s) and will bear all costs related to ownership, operation and maintenance of the Unit(s). As between the Parties, Seller shall have the sole right and discretion to determine the availability of the Unit(s) for operation.

(c) Exclusivity; Rights to Output and Payments. Seller will not commit less than [an entire Unit] to Buyer, nor sell [any] Product associated with a Unit to any Person other than Buyer (other than pursuant to an Instructed Operation as set forth in Section 3.5). Seller may not enter into [any] agreement or arrangement under which Product associated with Contract Capacity may be claimed by any Person other than Buyer for purpose of satisfying such Person's obligations to PJM or any other independent system operator having jurisdiction over such Person or the Unit(s). For the avoidance of doubt, Seller shall not cause the Unit to become subject to a Must-Run Generation agreement or any other obligation to deliver a Product to any other Person other than pursuant to an Instructed Operation, and Buyer shall have the exclusive right to enter into an Must-Run Generation agreement with respect to any Unit and/or resell any Product from any Unit, provided in each case that the Must-Run Generation agreement or resale would not result in a violation of the Operational Limitations of the affected Unit. Subject to the reporting requirements of Section 3.5, nothing herein shall bar Seller from complying with Instructed Operations; provided that if Seller receives an Instructed Operation other than through Buyer, Seller shall promptly report such event in accordance with Section 3.5(b). Seller acknowledges and agrees that Buyer may take whatever measures it elects to protest, challenge, eliminate, institute or modify any Instructed Operation, which may include communicating directly with the Governmental Authority or PJM, as applicable, responsible for such Instructed Operation. If during the Services Term Seller requires the ability to operate other than pursuant

to Buyer's Schedule or as otherwise expressly contemplated herein (for example, for the purpose of conducting environmental testing or to test newly installed equipment), it shall notify Buyer, and Buyer and Seller shall work in good faith to accommodate Seller's need consistent with other provisions of this Agreement, provided Seller shall be liable for Buyer's costs in accommodating Seller's requests. Operations undertaken pursuant to the prior sentence shall not be deemed to be part of Buyer's Schedule. At all other times during the Services Term, Seller shall sell and make available exclusively to Buyer [all] the Products of the Unit(s), and Buyer shall have the exclusive right to schedule, re-sell or convey all Products to which it is entitled under this Agreement. To the extent that Seller receives any payment associated with the Unit(s) or the Products, including non-Energy or fixed payments received for or in connection with Resource Adequacy Requirements, Instructed Operations or any Must-Run Generation agreement, from any Person other than Buyer, Seller shall remit such payment to Buyer ("Third Party Payments"). Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be made pursuant to Article VI.

(d) Unit Modifications. Seller shall have the right to increase the Capacity of the Project or to expand or change the configuration of the Project during the Services Term, and to sell such increased Capacity and associated Ancillary Services to third parties; provided, however, Seller shall give Buyer reasonable advance written notice of any such changes, and shall not (nor permit any other Person to), without the prior written consent of Buyer, increase, modify or decrease the Capacity of any Unit that is committed to Buyer; nor take any other action that would, or may reasonably be expected to, (i) increase the costs to Buyer under the Agreement, (ii) impair or limit the ability of the Unit to supply Products to the Buyer, (iii) impair the ability of the Buyer to purchase or receive Products from such Unit, (iv) impair the rights of the Buyer to full and exclusive rights to [all] of the Capacity of each Unit, or (v) reduce the ability of Seller to deliver any and all Products that the Unit is capable of producing, as set forth in Appendix 1, as measured at the Delivery Point, including the full amount of the Contract Capacity. Buyer's consent pursuant to this paragraph must be in writing and Buyer may delay its consent until it determines whether, or withhold its consent if it determines that, the proposed change would impair or limit the ability of the Seller to supply and deliver Products from the Unit(s) to the Buyer, the ability of the Buyer to purchase or receive Products from such Unit(s), or Buyer's full and exclusive rights to [all] of the Capacity of each Unit or otherwise adversely affect Buyer's interests in the Unit(s).

3.2 Interconnection Facilities. [Non-Negotiable Term]

(a) Construction. In accordance with Article V, the Seller shall have the obligation to construct and upgrade the Electrical Interconnection Facilities, including metering and submetering facilities, and Transmission Upgrades, and cause them to become operational.

(b) Maintenance of Electrical Interconnection Facilities. To the extent required to achieve the Initial Delivery Date and at all times during the Services Term, Seller shall maintain and/or cause to be maintained, at its expense, the Electrical Interconnection Facilities such that the Electrical Interconnection Facilities are capable of delivering the Products that can be generated or produced using the Guaranteed Contract Capacity in accordance with the terms of this Agreement to and at the Delivery Point during each month as applicable (in addition to such other output of the Project as the Electrical Interconnection Facilities are required to transmit) in accordance with the terms of this Agreement.

3.3 Fuel Supply, Transportation and Interconnection. [Non-Negotiable Term]

(a) Fuel Supply and Transportation. Seller shall be responsible for all contracts, arrangements for and costs of Fuel supply and delivery to the Project and the Unit(s), including all ancillary services related thereto such as balancing and storage of Gas, if applicable, as required for Seller to fulfill its obligations under the Agreement during the Services Term. [Note: The preceding is without prejudice to such pricing proposals as Seller wishes to offer, which may tie the price of Energy to fuel costs.]

(b) Gas Interconnection. [For Gas-Fired Projects] Seller shall be responsible for all costs related to upgrades to transmission facilities and construction of interconnection facilities required to interconnect the Unit(s) to enable delivery of Gas to the Unit(s) consistent with all standards and provisions set forth by FERC or any other Governmental Authority.

3.4 Electric Transmission and Delivery. [Non-Negotiable Term]

(a) Title and Risk of Loss. Title to and risk of loss related to each Product shall transfer from Seller to Buyer at the Delivery Point.

(b) Seller's Responsibility. During the Services Term, Seller shall arrange, schedule and be responsible for electric transmission service and any and all costs or charges imposed on or associated with the Products or its delivery of the Products, including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with any transmission outages or curtailment up to and at the Delivery Point, consistent with all standards and provisions set forth by FERC, PJM or any other applicable governing agency or tariff. Seller shall be responsible for paying the costs of any transmission system upgrade(s) required by PJM necessary for the performance of the obligations set forth in the Agreement. Regardless of whether Buyer is the interconnecting transmission owner, Seller shall be responsible for Seller's interconnection arrangements or costs.

(c) Buyer's Responsibility. During the Services Term, Buyer shall arrange, schedule and be responsible for electric transmission service and any and all costs or charges imposed on or associated with the Product(s) or its receipt of the Products, including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with any transmission outages or curtailment, from and after the Delivery Point.

3.5 Scheduling and Balancing.

(a) Scheduling. During the Services Term, Buyer will schedule the Unit(s) with PJM's Office of Interconnection.

(b) Buyer's Dispatch Rights. During the Services Term, Buyer shall have the exclusive right to schedule any or all Unit(s) for the delivery of any of the Products at any time, including on a day-ahead, hour-ahead and real-time basis within the defined Operational Limitations of the Unit(s).

(i) Seller's Scheduled Notices of Availability. Each day, between the hours of 12:01 a.m. and 5 a.m., commencing one week prior to the expected Initial Delivery Date and continuing thereafter throughout the Services Term, Seller shall provide Buyer a complete and accurate Notice of the expected availability and Capacity of each Unit (as reasonably determined at that time) for that day and each of the next

thirteen (13) days, setting forth therein the percentage of the Contract Capacity of that Unit that is expected to be available for Scheduled Operations and a disclosure of the existence and expected duration of any Outage or any Instructed Operation, the amount of Capacity affected by such Outage and the nature and effect of any Instructed Operation on the Unit's availability, regardless of whether or the extent to which such Unit is then or may be scheduled for dispatch; provided that such information shall be provided only for days that are part of the Services Term. Additionally, each month, commencing one month prior to the expected Initial Delivery Date and continuing thereafter throughout the Services Term (at such time of month as agreed to by the Parties from time to time), Seller shall provide Buyer a complete and accurate Notice of the expected availability and Capacity of each Unit for the next calendar month (as reasonably determined at the time), setting forth therein the percentage of the Contract Capacity that is expected to be available for Scheduled Operations and a disclosure of the existence and expected duration of any Outages, and the amount of Capacity affected by such Outage. The notices required pursuant to this Section shall be set forth on the forms attached as Appendix 4. Notices required pursuant to this Section 3.5(b)(i) shall be referred to as "Scheduled Availability Notices."

(ii) Seller's Continuing Obligations To Provide Notice of Availability.

During the Services Term, to the extent not reported in a Scheduled Availability Notice or pursuant to Section 3.10, Seller shall (A) notify Buyer's designated representative, orally or through an automated notification system, of every Outage of a Unit or imposition of an Instructed Operation as soon as possible (and in any event, using commercially reasonable efforts to do so within ten (10) minutes after the occurrence of such Outage), whether or not the Unit is scheduled for operation, (B) provide a written estimate of the expected duration of such Outage and/or nature of the Instructed Operation within one hour after submittal of the initial notification pursuant to clause (A) of this sentence, and (iii) submit an Outage/Availability Notification Form, in the form attached as Appendix 4, to Buyer in accordance with the instructions shown on the form. The Seller shall update Buyer periodically through the day as information become available as well as through Scheduled Availability Notices, with any revised estimates regarding the Unit's return to full output capability and shall promptly provide Buyer notice of any further change in the availability of a Unit or Products for dispatch from that set forth in the last notice provided, whether or not the Unit is scheduled for operation, including any developments that will affect the severity or duration of each Outage, availability and capability of the Unit to return to service after an Outage or scope and duration of the Instructed Operation.

(iii) Other Reporting Obligations. Each notice provided pursuant to Section 3.5(b)(i) and (b)(ii) that includes notice of an Outage or Instructed Operations shall include all such information concerning such Outage, change or limitation as PJM may require to be reported by Buyer or by Seller. Each such notice from Seller to Buyer shall be made by providing Notice in accordance with the Outage/Availability Notification Procedures set forth in Appendix 4. During the Services Term, Seller is responsible for providing to PJM notice of each Outage to the extent required by Law, the PJM Tariff or other PJM Agreements or contracts. During the Services Term, each of Seller and Buyer shall promptly communicate to the other all information received by it

from PJM or other Governmental Authority regarding planned or in-progress Outages or Instructed Operations. Seller is responsible for providing regulatory bodies such as FERC and the Commission with Outage information (for example but not limited to, NERC outage reporting requirements) as required by Law, Permit, tariff or regulation.

(iv) Buyer's Schedule. Commencing in the week prior to the expected Initial Delivery Date, as necessary for operations that commence no earlier than the Initial Delivery Date and thereafter throughout the Services Term, Buyer shall provide Seller once per week, a non-binding notice of expected Unit commitment over the course of the next week. Buyer shall schedule the delivery of Products in accordance with the Operational Limitations and in accordance with Section 3.6 of this Agreement (Standards of Care) and PJM operational protocols and provide notice of such schedule to Seller ("Buyer's Schedule").

(v) Seller's Operation. During the Services Term, Seller shall dispatch and operate each Unit as required to meet Buyer's Schedule except when and to the extent (A) a Unit designated to operate is incapable of operation due to an Outage (subject to the provisions for declaring and remedying Outages as set forth herein), (B) Buyer's Schedule is adjusted in accordance with Section 3.5(c), in which event Seller shall adhere to Buyer's Schedule as so adjusted, or (C) operation or dispatch is prevented by an Excused Event. During the Services Term, Seller shall not dispatch and operate the Unit(s) other than pursuant to Buyer's direction except as specifically contemplated herein.

(c) Other Scheduled Operations. Notwithstanding Buyer's exclusive rights to schedule and require delivery of the Products from the Unit(s) during the Services Term as set forth in Section 3.1(c), Buyer shall adjust Buyer's Schedule to the extent necessary to allow Seller to Start-Up, operate, curtail or Shut-Down the Unit(s) when required to permit Buyer to comply with an Instructed Operation.

(d) Deviation Charges. Buyer shall have no obligation or liability of any kind with respect to any uninstructed deviations. Should Seller fail to operate the Unit(s) in a manner to comply with Buyer's Schedule (unless due to Instructed Operations) and a deviation occurs between the quantity, time or location of Scheduled Energy and the Energy delivered or between the quantity, time or location of Ancillary Services scheduled and the Ancillary Services delivered ("Seller's Deviation"), Seller shall reimburse Buyer for any and all charges Buyer incurs as a result of Seller's Deviation, including charges imposed on Buyer with respect to the scheduling of the Unit(s), by PJM for Seller's uninstructed deviations as follows: Each month, Seller shall owe Buyer the sum (if positive) or Buyer shall owe Seller the sum (if negative) of (i) any and all charges assessed on Buyer for real-time or replacement Products that are incurred due to Seller's Deviation (i.e., under-generation), plus (ii) any and all charges, penalties or surcharges assessed on Buyer for Seller's Deviations, including any charges assessed on Buyer for over or under generation (other than payments or charges covered by the preceding clause and charges assessed due to Buyer's scheduling error) and amounts assessed by PJM in the event that a Unit fails to meet the standards established by PJM for the provision of Ancillary Services, plus (iii) any and all amounts paid by Buyer to Seller for Products not delivered, less (iv) any and all payments made to Buyer by PJM for supplying Products in excess of the those delivered

pursuant to Scheduled Operations (cumulatively "Deviation Charges"). Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI. [**Unit-Contingent:** Notwithstanding any provision of this Section 3.5(d) to the contrary, Seller shall not be obligated to compensate Buyer for any amount otherwise due under this Section 3.5(d) on account of the under-delivery of any Product caused by the full or partial unavailability of the Project due to a Forced Outage, Scheduled Maintenance Outage or Force Majeure Event; and the compensation rates in Article IV shall appropriately adjust for such unavailability of the Project.]

3.6 Standards of Care.

(a) General Operations. Seller, as Owner and Operator of the Project, shall be responsible for complying with all applicable requirements of Law, the Commission, PJM, NERC and other Governmental Authorities relating to the Project and the Unit(s) (including those related to construction, ownership and/or operation of the Project and the Units(s)), whether imposed pursuant to existing Law or pursuant to changes enacted or implemented during the Contract Term, including all risks of environmental matters relating to the Project and the Unit(s) subject to Section 9.2 with respect to Btu or carbon taxes imposed in the future. For the avoidance of doubt, Seller will be responsible for procuring, at its expense, all Permits, emissions credits, offsets and allowances required for operation of the Project and the Unit(s) in compliance with Law.

(b) PJM Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of PJM and the applicable pipeline or local distribution company [if applicable], (ii) PJM scheduling practices and (iii) Good Utility Practices.

(c) Reliability Standard. Seller agrees to abide by all NERC, PJM and Commission reliability requirements and all of Buyer's applicable requirements regarding interconnection and operation of the Unit(s) as set forth in Schedule 7, as such schedule is updated from time to time by Buyer.

3.7 Meter Maintenance and Operation. All electric metering equipment, whether owned by Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Good Utility Practices.

3.8 Metering.

(a) Meter Installation and Testing. In accordance with applicable PJM procedures and requirements, Seller shall provide, install, maintain, operate and replace (as needed) appropriate electric meters and back-up meters at the Seller's side of the Delivery Point at its sole cost and expense to accurately determine Energy and the quantities of Products delivered under this Agreement. The meters will be sealed by both Parties, which seals will only be broken by both Parties for inspection, testing or adjustment. The electric meters shall meet all specifications of PJM and shall be checked annually by Seller, who shall provide Buyer with not less than thirty (30) days prior written Notice of such tests. Buyer will have the right to have a representative(s) present during such tests. Seller shall exercise reasonable care in the maintenance and operation of such metering equipment so as to assure to the maximum extent practicable an accurate determination of such quantities of Energy and Products. Seller shall establish in consultation with Buyer a system allowing Buyer and Seller to provide real-time

dynamic signals sufficient to fulfill the scheduling parameters set forth in Schedule 6 hereto, including enabling Seller or its agent to provide real-time dynamic signals to Buyer regarding the types and amounts of Product that are to be made available to Buyer pursuant to this Agreement and enabling Seller to provide Buyer or its agent real-time dynamic signals specifying the amounts of Energy and other Products that are being delivered to the Delivery Point at all times. The amount of Energy and Products measured by the metering equipment as being delivered to the Delivery Point rounded downward to the nearest MWh shall be the basis for determining the amount of Product delivered pursuant to this Agreement, subject to Buyer's testing and audit rights.

(b) Meter Retesting and Inaccuracy. Either Party may from time to time request a retest of the meters if it reasonably believes that the meters are not accurate within the tolerance limits established by PJM or [the applicable service provider]. The requesting Party shall pay for any such retest and shall provide the other Party with not less than fourteen (14) days prior written Notice of such retest. Such other Party will have the right to have a representative present during such retest. If any tested or retested meter is found to be not accurate within the tolerance limits established by PJM, Seller shall promptly arrange for the correction or replacement of the meter, at its expense, and the Parties shall use the measurements from the back-up meters or submeters to determine the amount of the inaccuracy. If the back-up meters or submeters are found to be not accurate within the tolerance limits and the Parties cannot otherwise agree as to the amount of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the earlier of (a) one-half of the period from such discovery to the date of the last testing or retesting of the meters or (b) one hundred eighty (180) days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the tolerance limits will be invoiced by such Party within fifteen (15) days of the discovery of such inaccuracy, with payment due within thirty (30) days after the date of the invoice for such amounts.

(c) Access to Meters. To support invoice settlement purposes, Seller shall provide Buyer with access pursuant to Section 3.11(b) to all real-time meters, billing meters and back-up meters (i.e., all metering). Seller shall authorize Buyer to view the Unit(s)' on-line meter data.

3.9 [Reserved]

3.10 Scheduled Maintenance Outages and PJM Maintenance Outages.

(a) Seller's Scheduled Maintenance Outage and PJM Maintenance Outage Proposed Schedule. Seller shall notify Buyer of its proposed Scheduled Maintenance Outages for the Unit(s) by submitting to Buyer a completed Outage/Availability Notification Form (see Appendix 4) that fully accords with the requirements of Section 3.10(b) as follows:

(i) for the next calendar year, by no later than September 1 of each year during the Services Term; and

(ii) for each quarter, updating to the extent required the annual schedule previously Noticed, by no later than thirty (30) days prior to the commencement of each quarter; provided that Scheduled Maintenance lasting longer than five consecutive days may be taken only after a minimum of fifty (50) Business Days advance Notice prior to

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Deleted: . On and after the Initial Delivery Date, in the event any Product required to be delivered to Buyer hereunder shall not be available to Seller for delivery to Buyer, Seller shall be required to procure and substitute such Product from a source other than the Unit(s) designated by Buyer for sale or delivery to Buyer under this Agreement. If Seller cannot meet its obligation to deliver Products pursuant to the terms of the Agreement and is unable to arrange for the delivery to Buyer of substitute Products meeting the requirements of the Agreement at the times required under the Agreement, Seller shall promptly Notify Buyer of its inability to deliver Products within three (3) Business Days prior to the date of such delivery, and shall pay to Buyer all of Buyer's costs of obtaining such Product from Third Parties to the extent the same exceed the price Buyer would have paid for such Product under this Agreement (i.e., cost of cover). All costs incurred by Buyer pursuant to the previous sentence shall be invoiced to Seller by Buyer and paid to Buyer by Seller pursuant to payment provisions set forth in Article VI. [Firm Power only]

the month in which the Scheduled Maintenance will occur; Scheduled Maintenance lasting longer than two consecutive days but shorter than five days may be taken only after a minimum of thirty (30) Business Days advance Notice prior to the month in which the Scheduled Maintenance will occur; and Scheduled Maintenance lasting less than two days may be taken only after a minimum of fifteen (15) Business Days advance notice prior to the month in which the Scheduled Maintenance will occur.

(b) Scheduled Maintenance Outage Restrictions. Except as provided elsewhere in this Agreement, including, without limitation, Section 3.10(f) below:

(i) there shall be no Scheduled Maintenance during the Summer Months or the Winter Months;

(ii) Scheduled Maintenance Outages for any Unit, whether full or partial Scheduled Maintenance Outages, may not exceed [] hours total in any consecutive twelve (12) month period; provided that Scheduled Maintenance Outages of up to [] hours total may be permitted within a consecutive twelve (12) month period when major maintenance overhauls are required; and

(iii) Seller may schedule only one major maintenance overhaul during a consecutive sixty (60) month period for any Unit.

(c) Buyer-Requested Changes to Maintenance Outage Schedule. At any time, Buyer may request that Seller change its Scheduled Maintenance Outage schedule. Seller shall notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer's proposed change is feasible and imposes no incremental costs (as compared to Seller's proposed schedule), or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request and shall communicate the changes to PJM and seek PJM approval for the revised schedule.

(d) PJM Approval of Outages. Seller is responsible for securing all PJM approvals and complying with all PJM requirements, as applicable, for all Scheduled Maintenance Outages and PJM Maintenance Outages, including securing changes in the proposed Scheduled Maintenance Outage and PJM Maintenance Outage schedules when PJM disapproves such schedules or cancels previously approved Scheduled Maintenance Outages or PJM Maintenance Outages. Seller shall submit the proposed Scheduled Maintenance Outages for the Unit(s) to PJM in a form approved by Seller, as modified in accordance with Section 3.10(c). Seller shall adhere to the Scheduled Maintenance Outage schedule approved by PJM.

(e) Schedule Changes. In the event that the Seller reasonably concludes the Unit(s) must be shut down to conduct maintenance that cannot be delayed until the next Scheduled Maintenance Outage established in accordance with Sections 3.10(a) through (d), Seller shall provide Buyer's Authorized Representative with a written request to change the Scheduled Maintenance Outage schedule, provided that a request shall not be made unless each

of the following conditions are met: (a) Seller's Authorized Representative warrants that the maintenance cannot be delayed until the next Scheduled Maintenance Outage, (b) the Outage will not violate any Law, or any rule, regulation or requirement of PJM (including the PJM Tariff), NERC or the Commission, (c) the Seller delays the commencement of the Outage until the next Saturday and/or Sunday and (d) Seller completes the maintenance and provides Buyer with Notice that the Unit is again available for scheduling within the earlier of 48 hours after the maintenance begins or the hour ending 500 on the immediately following Monday, and (e) the requested maintenance is consistent with Good Utility Practices. Only with Buyer's written consent shall such change to the schedule be deemed to be a Scheduled Maintenance Outage.

(f) PJM Maintenance Outages. In the event Seller desires to take a Unit out of service in a manner that would be recognized by PJM as a PJM Maintenance Outage but does not otherwise comport with the requirements to be a Scheduled Maintenance Outage as set forth in Sections 3.10(a) through 3.10(e), Seller shall notify Buyer of its proposed PJM Maintenance Outages for the Unit(s) by submitting to Buyer a completed Outage/Availability Notification Form (see Appendix 4) as promptly as possible upon determining the need for such maintenance. Seller shall then submit the proposed PJM Maintenance Outages for the Unit(s) to PJM in the form approved by Seller. Seller shall adhere to the PJM Maintenance Outage schedule approved by PJM. At any time, Buyer may request that Seller change its PJM Maintenance Outage schedule. Seller shall notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer's proposed change to Seller's PJM Maintenance Schedule is feasible and imposes no incremental costs (as compared to Seller's proposed schedule) or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request and communicate the change to PJM and seek PJM approval for the revised PJM Maintenance Outage schedule.

(g) Exclusions. Any Outage taken pursuant to Section 3.10(f) that does not also meet the requirements set forth in Sections 3.10(a) through (e) above for a Scheduled Maintenance Outage, and any Outage taken outside of or in excess of the times permitted for Scheduled Maintenance Outages or not otherwise in accordance with this Section 3.10(a) through (e), shall be treated as Forced Outages and the Unit(s) will be deemed to be unavailable during such periods for purposes of determining the Equivalent Availability Factor.

3.11 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations of the Unit(s) and the Project on a daily basis. Such log shall include, but not be limited to, information on power production, Fuel consumption, efficiency, availability, maintenance performed, Outages, electrical characteristics of the generators and similar information relating to the availability, testing and operation of the Unit(s) and availability and production of the Products. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project and the Unit(s) at any time upon reasonable notice and for any purposes reasonably connected with this Agreement, including

verification of the Unit's(s') availability or unavailability and to monitor construction of the Project and the Unit(s).

3.12 Capacity Testing.

(a) Initial Testing Requirement. Within 30 days prior to the Initial Delivery Date, Seller shall conduct an Initial Capacity Test for purposes of establishing the Commercial Operation Date.

(b) Initial Capacity Test Procedure. The Initial Capacity Test shall be conducted in accordance with the following procedures ("Test Procedures"):

(i) The Initial Capacity Test shall consist of three (3) one-hour test periods. For each one-hour test period, the data will be averaged and corrected back to ISO Conditions. The Capacity of the Unit(s) will be the arithmetic average of the three corrected test results.

(ii) The Energy output of the Unit(s) during the Initial Capacity Test shall be measured by the PJM revenue meter at the Delivery Point and the submeter for the Unit being tested.

(iii) The Capacity of a Unit as demonstrated by the Initial Capacity Test ("Tested Capacity") shall be the metered Energy output of such Unit per hour (measured in megawatts), adjusted to ISO Conditions, by using standard and accepted engineering methods. The determination of the Tested Capacity shall be done by Seller. The Initial Capacity Test results shall be delivered to Buyer no later than forty-eight (48) hours after the completion of the Initial Capacity Test.

(iv) Buyer may have a representative present at the Project at any time during the Initial Capacity Test.

(v) The Parties shall provide for additional procedures and protocols related to Capacity testing, consistent with the principles set forth above, in the Operating Procedures, which shall be additional "Test Procedures."

(c) Cost Responsibility.

(i) Seller shall bear all costs of the Initial Capacity Test.

(ii) Buyer shall accept and pay for all Energy produced during such testing at the then-prevailing rate under the Locational Marginal Price, as determined by PJM.

(d) Disputes. If Buyer disputes the establishment of the Tested Capacity, as determined by Seller pursuant to this Section 3.12, in any respect, including the adjustment of the metered results to establish the Tested Capacity, the dispute shall be resolved in accordance with Article XIII (Dispute Resolution). Pending such resolution, the Tested Capacity shall be calculated according to the procedures set forth in this Section 3.12, provided that in the event that the dispute is resolved such that any invoices under the Agreement shall be adjusted retroactively, Seller or Buyer, as applicable, shall refund the excess payments or pay the

deficiency to the other Party, with interest calculated at the Interest Rate, retroactive to the date on which the correct amount should have been due.

3.13 Operating Procedures. [Non-Negotiable Term] Prior to the Initial Delivery Date, the Parties shall mutually develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein including, but not be limited to, (1) procedures for scheduling and dispatch, (2) methods of day-to-day communications, (3) key personnel lists, (4) record keeping and (5) such other procedures and protocols as the Parties deem appropriate for implementation of this Agreement (the "Operating Procedures"); provided that failure to agree on such procedures (i) shall be resolved in accordance with the procedures set forth in Article XIII (Dispute Resolution) and (ii) shall not relieve either of the Parties of its obligations under this Agreement.

3.14 Resource Adequacy Requirements. During the Services Term, Seller shall commit the Unit(s) to Buyer for, among other things, the purpose of meeting any Resource Adequacy Requirements ("RAR") applicable to Buyer that may be established by the Commission or PJM (or a successor control area operator) from time to time, and shall comply with any Commission, PJM or FERC requirements for meeting RAR. For avoidance of doubt, included within Buyer's exclusive rights to [all] Products available from the Unit(s), Buyer is entitled to [all] Products, rights and entitlements that are related to RAR, including capacity tags, capacity credits, and all installed capacity and other Capacity-related Products pertaining to Buyer's entitlement to the Products from the Unit(s). Throughout the Services Term, Seller shall take all such actions and execute any and all documents or instruments necessary to ensure the availability and qualification of each Unit and its Contract Capacity to meet Buyer's RAR and Buyer's or PJM's right to the use of the Unit(s) and [all] of its Products for the benefit of Buyer's RAR. Notwithstanding the foregoing, in the event Seller is required to incur any increase in operating or capital costs, in excess of \$[] in order to meet Buyer's RAR, Buyer shall have the option to waive or enforce compliance with the obligations related to RAR hereunder, and shall, in the latter case, compensate Seller for the incremental costs it would not have incurred but for compliance with RAR in excess of \$[]. In the event the Parties disagree on the amount needed to keep the Seller in the same financial position as it would have been in had it not been required to incur any such costs of compliance with RAR, the matter shall be resolved in accordance with the dispute resolution provisions set forth in Article 13. Subject to the above terms of this Section 3.14, the actions required of Seller pursuant to this Section 3.14 may include the following:

(i) Cooperating with Buyer, and cooperating with and encouraging the regional entity or Governmental Authority responsible for resource adequacy administration, to certify or qualify the Unit(s) and no less than [all] of the Contract Capacity of the Unit(s) for RAR purposes; meeting requirements established by PJM in its resource adequacy counting protocols, including demonstration of the ability to deliver no less than [all] of the Contract Capacity over all hours required for full RAR eligibility, and demonstrating that no less than [all] of the Contract Capacity can be delivered to the PJM Grid pursuant to any deliverability standards established by PJM or other regional entity or entities responsible for RAR administration;

(ii) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions rendered by the Commission or the regional entity or entities or Governmental

Authority responsible for RAR administration, so as to maintain the benefits of the bargain struck by the Parties; and

(iii) Taking commercially reasonable measures necessary to comply with any Commission or PJM requirements for meeting RAR, including by way of example, making the Unit(s) available to PJM for dispatch; complying with all requirements associated with RAR that are imposed through either PJM market design and tariffs, the Commission or FERC, including, for example, requirements related to bidding and/or dispatch including those imposed for the day-ahead, hour-ahead and real-time markets; installing communication equipment, complying with communication protocols, making capital improvements and incurring operating expenses; and changing operations.

ARTICLE IV

AVAILABILITY AND COMPENSATION

4.1 Availability. [Unit-Contingent Only]

(a) Target Equivalent Availability Factor. The "Target Equivalent Availability Factor" of each Unit is as follows:

January - February: []% Equivalent Availability Factor

March - May: []% Equivalent Availability Factor

June - September: []% Equivalent Availability Factor

October - November: []% Equivalent Availability Factor

December []% Equivalent Availability Factor

[Note: monthly target EAF numbers must be consistent with annualized Target EAF specified in Form D of Bidder Response Forms; June-September Target EAF must be at least 3% higher than annualized EAF and January-February Target EAF must be at least 2% higher than annualized EAF]

(b) Calculation of Equivalent Availability Factor. Each month Seller shall calculate the Equivalent Availability Factor of each Unit, subject to audit by Buyer. Subject to Operating Procedures developed pursuant to Section 3.13, if Seller identifies a Unit as unavailable due to an Outage (e.g., including in a Scheduled Availability Notice or pursuant to an Outage/Availability Notification Form) for any hour, the Unit shall be deemed unavailable for that hour for purposes of the Equivalent Availability Factor calculation, provided that if Seller provides a revised notice indicating the Unit is available for an hour in which it was previously deemed unavailable due to an Outage at least thirty (30) minutes prior to the earlier of the time the Buyer is required to schedule or bid the Unit in PJM's day-ahead energy market, the Unit will not be deemed to be unavailable due to an Outage for such hour for purposes of determining the Equivalent Availability Factor; and if Seller provides a revised notice indicating the Unit is available for an hour in which it was previously deemed unavailable due to an Outage at least 30 minutes prior to the earlier of the time the Seller shall schedule or bid the Unit in PJM's hour-ahead energy market, then if the Unit is dispatched in PJM's hour-ahead energy market, all of the available Capacity of the Unit will be deemed to be available for such hour for purposes of determining the Equivalent Availability Factor.

4.2 Product Compensation.

(a) Compensation Rates.

(i) Capacity Payment Rate ("CPR") shall equal \$ ____ per kW-year.
[Price to include Ancillary Services unless otherwise specified by bidder]

(ii) Energy Rate ("ER") shall equal \$ ____ per MWh.

(iii) [Renewable Energy Credits Rate ("RR") shall equal \$ __ per MWh.]
[subject to maximum volume limitations pursuant to Section 3.1(a).]

(b) Product Payment Obligations.

During each month of the Services Term, Buyer shall pay Seller, in arrears, a Monthly Fixed Payment ("MFP") for each Unit, as full payment for the right to receive the Products and the delivery of the Capacity, Renewable Energy Credits and [all] other Products associated with the Unit, determined as follows:

$$MFP_m = [(CPR * 8.333\%) * MCC_m] * AA + [ER * MED] + [RR * MRD]$$

where,

MFP_m is the Monthly Fixed Payment for the subject month;

MCC_m for the subject month is the Monthly Contract Capacity for such month;

AA (Availability Adjustment) shall be calculated as set forth on Appendix 5;

MED is the monthly Energy delivered to Buyer by Seller.

MRD is the monthly RECs delivered to Buyer by Seller.

[Note: Availability Adjustment not used for intermittent renewable energy projects or offers to provide Firm Service. For wind energy projects and other intermittent renewable energy projects, Buyer will pay Seller for the amount of UCAP from Buyer's entitlement to Contract Capacity from the Project as determined by PJM from time to time.]

ARTICLE V

CONDITIONS PRECEDENT; EFFECTIVE DATE; CONSTRUCTION; AND INITIAL DELIVERY DATE

5.1 The Effective Date.

(a) Conditions Precedent to Effective Date. The Effective Date shall be deemed to have occurred on the satisfaction of the following conditions precedent:

(i) Buyer and Seller, as applicable, shall have entered into the Project Security Agreement and the other Ancillary Agreements.

(ii) Seller shall have provided to Buyer the initial installment, based on the amount of

\$50/kW [\$20 for intermittent renewable energy projects] of the Guaranteed Capacity, of the Development Period Security pursuant to Section 8.1(a).

(iii) Buyer's independent outside auditing firm shall have determined that Buyer will not be required to consolidate Seller on Buyer's financial statements under the latest interpretations of the Financial Accounting Standard Board's Interpretation No. 46 ("FIN No. 46"), "Consolidation of Variable Interest Entities."

(iv) Regulatory Approval shall have occurred and either no timely appeal is filed and the Regulatory Approval shall be final and nonappealable or, in the event of a timely appeal of the Regulatory Approval, such approval is upheld on appeal and is no longer subject to appeal.

Not later than [] days after Regulatory Approval has been obtained, Buyer shall seek to obtain a determination from Buyer's independent outside auditing firm with respect to the condition precedent in subclause (iii) above and shall thereupon give Notice to Seller whether or not such condition has been satisfied. If, within sixty (60) days of Buyer's request for such determinations, Buyer's independent outside auditing firm makes neither the determination that Buyer will not be required to consolidate Seller as described above nor the determination that Buyer will be required to consolidate, the condition precedent in subclause (iii) above shall be deemed to have been satisfied; provided, however, that the deemed satisfaction of such condition precedent shall be without prejudice to Buyer's subsequent right to terminate under Section 12.4, and the provisions of Section 12.4 requiring the outside auditing firm's determination that consolidation is required be "due to Seller's actions or other changes in circumstance" shall not be applicable to the outside auditing firm's initial determination made after such sixty (60) day period. In the event Buyer's independent outside auditing firm determines in such sixty (60) day period that Buyer will be required to consolidate Seller on Buyer's financial statements, Seller shall have a thirty (30) day period in which to cure the event or circumstances identified by Buyer's independent outside auditing firm as triggering consolidation under FIN No. 46. In the event that Seller is unable to cure the event or circumstance under FIN No. 46 triggering consolidation, as determined by Buyer, Seller shall then have a thirty (30) day period to appeal to the Commission for expedited review of the measures, if any, available to Seller to avoid consolidation. In the event that Seller fails expeditiously to adopt measures determined by the Commission to avoid consolidation, or that no such measures are determined to be available, Buyer shall within sixty (60) days determine either to exercise its right of termination of this Agreement as set forth in Section 12.4 or to waive the satisfaction of the condition precedent in subclause (c), above, and any subsequent right to terminate Buyer might otherwise have under Section 12.4, except if a different and subsequent event or circumstance triggers consolidation or FIN No. 46 is modified such that the same event or circumstance triggers consolidation.

(b) Failure of the Effective Date. In the event that a condition precedent to the Effective Date has failed to be satisfied, provided that a Party has made commercially reasonable efforts, based on the extent of its reasonable control, to satisfy the conditions precedent to the Effective Date set forth in Section 5.1(a), such Party shall have the right to terminate this Agreement, as long as such right is exercised by Notice received within thirty (30) days after such [] failure. If Seller has the right to terminate this Agreement in accordance with the above provisions of this Section 5.1(b), and this Agreement is terminated pursuant to this Section

5.1(b), Buyer shall refund to Seller the full amount of Development Period Security posted by Seller within ten (10) Business Days of such termination.

5.2 Construction.

(a) Design, Development and Construction. As between Buyer and Seller, Seller shall have sole responsibility for the design and construction of the Project and the Unit(s), Transmission Upgrades (if any) and all related metering and submetering facilities, including the obligation to perform all studies, including environmental studies, pay all fees, obtain all necessary Permits and execute all necessary agreements with PJM and the Participating Transmission Owner for the Electrical Interconnection Facilities, Transmission Upgrades and with the applicable counterparties for the Fuel Interconnection Facilities necessary for the ownership, construction, operation and maintenance of the Unit(s) and delivery of Seller's Products to Buyer. Such design, construction and upgrades shall be consistent with all standards and provisions set forth by FERC, PJM or any other applicable Governmental Authority and the interconnecting transmission owner. All Electrical Interconnection Facilities and Fuel Interconnection Facilities, including metering and submetering facilities and Transmission Upgrades must be of sufficient capacity to permit the Unit(s) to operate at all times during each month at the Guaranteed Capacity (in addition to such capacity as required for units located at the Project that are not committed to Buyer). Metering and submetering facilities must meet such additional specifications as set forth in Sections 3.7 and 3.8.

(b) Construction Scheduling. [Non-Negotiable Contract Term] At least three (3) months prior to issuance of the notice to proceed by Seller to the EPC Contractor, Seller shall provide Buyer a construction schedule detailing the schedule and construction milestones for completing the [Project][Unit(s)] and reaching the Commercial Operation Date. Seller shall provide monthly progress reports, including projected time to the Commercial Operation Date, and Buyer shall have the right, during business hours and upon reasonable notice, to inspect the construction site and monitor construction of the Project.

(c) Permitting. In the event that, after making commercially reasonable efforts, Seller fails (i) to secure Permits required for the construction or commencement of commercial operation of the Project or (ii) to obtain PJM permission to interconnect the Project to the PJM grid within a time required to complete the Unit on a timely basis Seller shall, upon ten (10) days written notice to Buyer, be permitted, in its sole discretion, to terminate the Agreement and Buyer shall, within ten (10) days of such termination return the entire Development Period Security to Seller. As used herein receipt of PJM permission to interconnect to the PJM grid means that this Agreement shall be modified to include the costs incurred by Seller for all required PJM system upgrades for such interconnection. all costs of such interconnection.

(d) Critical Milestones. The Seller shall cause the development and construction of the Project to meet each of the Critical Milestones on or before the dates specified for such Critical Milestones or prior to the dates specified in Section 1.1, and shall provide Notice (including evidence reasonably requested by Buyer) when each Critical Milestone is accomplished. [Note: Critical Milestones to be determined based on ability to achieve Initial Delivery Date by the Guaranteed Initial Delivery Date.]

(e) Default. If Seller fails to complete any Critical Milestone within twelve (12)

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Deleted: less \$50 per kW of Guaranteed Capacity [\$20 per kW for intermittent renewable energy projects] as liquidated damages if Seller, after making commercially reasonable efforts to do so, is unable to secure the Permits required for the construction and commencement of commercial operation of the Project, excepting such Permits for operation which are routinely granted on or about the time of the commencement of commercial operation (the "Permitting Milestone"), on or prior to [date] (the "Permitting Deadline"). In the event that after making all commercially reasonable efforts to do so, Seller cannot satisfy the Permitting Milestone prior to the Permitting Deadline, then, at Seller's election, Seller shall be permitted to extend the Permitting Deadline by six (6) months if Seller agrees, going forward, to pay the full amount of the Development Period Security to Buyer as liquidated damages if Seller is unable to obtain the necessary Permits to achieve the Permitting Milestone by the extended Permitting Deadline and Buyer exercises its right to terminate this Agreement.

months of the date such event is scheduled to occur on or before and such failure is not caused by a Force Majeure Event, such failure will be deemed an Event of Default and Buyer may elect to exercise the remedies that are available upon such an Event of Default pursuant to Article XII, including termination of this Agreement after Notice.

(f) Reports. Within five (5) days after the close of each calendar month until the Initial Delivery Date, Seller shall provide to Buyer a Monthly Construction Progress Report addressing each of the Milestones (see Schedule 3) including projected time to completion, and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Buyer shall have the right, during business hours and upon reasonable notice, to inspect the Site and/or on-Site Seller data and information pertaining to the Unit(s) and otherwise inspect or audit to enforce its rights pursuant to this section.

5.3 Initial Delivery Date.

(a) Conditions Precedent. The Initial Delivery Date shall occur, on or after the Effective Date, upon the date on which each of the following conditions precedent have been satisfied or waived by written agreement of the Parties.

(i) Seller shall construct or cause to be constructed the Project at no expense to Buyer, which shall include the equipment and characteristics as described in Appendix 1, and which shall reasonably be expected to enable Seller to satisfy the obligations of the Seller herein.

(ii) Seller shall construct or cause to be constructed the Electrical Interconnection Facilities at no expense to Buyer such that the Electrical Interconnection Facilities are capable of delivering the Guaranteed Capacity to and at the Delivery Point during each month (in addition to any other output of the Project as the Electric Interconnection Facilities are required to transmit) and shall cause them to be placed into service, in each case, in accordance with the requirements of the interconnecting transmission owner and/or operator, and applicable rules, if any, of FERC, PJM, the Commission and any other organization or Governmental Authority charged with reliability responsibilities.

(iii) At Seller's expense, Seller shall cause any and all Transmission Upgrades required to enable the grid to accept delivery of the full Contract Capacity for all Units (in addition to any other output of the Project) at all times during each month, to be constructed and placed into service, including, to the extent necessary, by funding the Transmission Upgrades.

(iv) At Seller's expense, Seller shall secure all Permits required for the lawful operation and maintenance of the Project and the Unit(s), inclusive of the Electrical Interconnection Facilities, including all those related to environmental matters, as necessary to permit the Unit(s) to operate at Guaranteed Capacity and for Seller to perform its obligations under the Agreement; and demonstrate that it possesses all emissions allowances, credits and offsets necessary for such operation of the Unit(s) at the Guaranteed Capacity for a period of at least one year.

(v) Seller shall have executed all interconnection, transmission services, Fuel supply and Fuel transmission agreements, including the Interconnection Agreement, necessary for Seller to perform its obligations hereunder in form and substance reasonably satisfactory to Buyer, and which agreements shall be in full force and effect as of the Initial Delivery Date.

(vi) The Commercial Operation Date shall have occurred or will occur simultaneously with the Initial Delivery Date.

(vii) Seller shall provide Buyer with Notice that the Commercial Operation Date has occurred or will occur simultaneously with the Initial Delivery Date.

(viii) No default or Event of Default shall have occurred and remain uncured as of the Initial Delivery Date.

(ix) Seller shall have provided Buyer with notice of the expected occurrence of the Initial Delivery Date no later than ten (10) Business Days prior and again three (3) days prior to its occurrence and again immediately prior to the date it occurs.

(x) Seller shall have entered into [list applicable PJM agreements], which shall be in full force and effect.

(xi) Seller has posted the Collateral required to be posted in favor of Buyer as of the Initial Delivery Date pursuant to Section 8.1(b).

[Sections 5.4 and 5.5 are Non-Negotiable Terms]

5.4 Delay Damages; Termination Upon Delay. Subject to Section 5.5, in the event that the conditions precedent to the occurrence of the Initial Delivery Date are not satisfied or waived on or prior to the Guaranteed Initial Delivery Date, for each day beginning with the day after the Guaranteed Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, Seller will be required to pay Buyer liquidated damages in the amount of \$[] [determined using \$0.2333 per kW of Guaranteed Capacity] ("Delay Damages"). The maximum amount of Delay Damages payable by Seller shall be \$[] [determined using daily Delay Damages amount multiplied by 365] ("Maximum Delay Damages"). In the event that Seller has not satisfied the conditions precedent to the Initial Delivery Date within 365 days of the Guaranteed Initial Delivery Date the ("Date Certain"), Buyer may elect to terminate the Agreement without liability or further obligation of any kind on the part of Buyer, and the Seller shall pay a termination fee equal to \$[] [determined using \$100 per kW of Guaranteed Capacity] as liquidated damages to Buyer (the "Termination Fee"). The non-occurrence of the Initial Delivery Date by the Date Certain will also constitute an Event of Default pursuant to Section 12.1(a)(xii) of this Agreement. If such an Event of Default occurs, then any time prior to the satisfaction of the conditions precedent to the Initial Delivery Date, Buyer may elect to exercise the remedies that are available upon such an Event of Default pursuant to Article XII, or in the alternative, Buyer will have the option to extend the end date of the Services Term by a period equal to the difference between the Guaranteed Initial Delivery

Date and actual Initial Delivery Date. For the avoidance of doubt, the Maximum Delay Damages shall apply to limit aggregate Delay Damages, but shall not limit payment of the full amount of the Termination Fee as liquidated damages as set forth above or the payment of liquidated damages in accordance with Article XII due to Buyer's right to terminate due (i) to Seller's failure to achieve the Permitting Milestone, (ii) Seller's failure to achieve the Initial Delivery Date, or (iii) Seller's failure to achieve any Critical Milestone.

5.5 Effect of Force Majeure. Each Critical Milestone and the Guaranteed Initial Delivery Date shall be extended on a day-for-day basis without the payment of liquidated damages to the extent that such Critical Milestone or Guaranteed Initial Delivery Date is delayed as a result of a Force Majeure Event invoked by the Seller in accordance with Section 14.3.

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ARTICLE VI

PAYMENT AND NETTING; RECORDS AND AUDIT RIGHTS

6.1 Billing and Payment. On or before the 15th calendar day of each month of the Contract Term, following the Initial Delivery Date, Seller shall invoice Buyer, in arrears, for all amounts due from Buyer to Seller under this Agreement, including, as applicable, the MFP, and the Regulatory Charges Payment, if any, less Third Party Payments. On or before the 15th calendar day of each month of the Contract Term, following the Initial Delivery Date (or Guaranteed Initial Delivery Date if earlier), Buyer shall invoice Seller, in arrears, for all amounts due from Seller to Buyer under this Agreement, including, as applicable, Delay Damages, Regulatory Charges Payment, [and costs of replacement Products obtained by Buyer pursuant to Section 3.9] **[Firm Power only]**. In each case, invoices shall include amounts accrued under this Agreement in the preceding month, provided that to the extent the determination of amounts due under this Agreement are based on invoices rendered by PJM or Governmental Authorities in the preceding month, the Parties acknowledge and agree that such amounts may relate to prior calendar months, as adjusted from time to time.

6.2 Netting. If each Party is required to pay the other an amount in the same month pursuant to this Agreement or any of the Ancillary Agreements, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Payment of all undisputed amounts owed shall be due by the later of ten (10) days after delivery of the owed Party's invoice or the twentieth (20th) day of the month ("Monthly Payment Date"). If either the invoice due date or Monthly Payment Date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the Monthly Payment Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the Monthly Payment Date to but excluding the date the delinquent amount is paid in full. Notwithstanding anything herein to the contrary, in the event Seller fails to post adequate amounts of Collateral as required by Article VIII, Buyer may withhold payments to be made to Seller pursuant to Section 6.1 in the amount of such deficiency or terminate the

Agreement pursuant to Sections 12.1(a) and 12.2.

6.3 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustments arising hereunder is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible in accordance with the provisions of Article XIII (Dispute Resolution). Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date on which the payment is made. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent invoices, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Except with respect to audit corrections as provided in Section 6.6(a), any dispute with respect to an invoice is waived unless the other Party is Notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance giving rise to the payment obligation occurred the right to payment for such performance is waived.

6.4 Termination Payment. In the event that an Early Termination Date is declared pursuant to Article XII, Buyer shall determine the amount of the Termination Payment in accordance with Section 12.2 and shall deliver said calculation of the Termination Payment and, if and as applicable, an invoice to Seller for any amount due within five (5) Business Days of the Early Termination Date. If Seller does not agree with Buyer's calculation of the Termination Payment, Seller shall deliver its own calculation of the Termination Payment to Buyer along with the payment of any undisputed amount owed by Seller to Buyer within five (5) business days of its receipt of Buyer's calculation. Buyer shall pay any undisputed amount of the Termination Payment owed by Buyer to Seller within twenty (20) Business Days after the Early Termination Date. Any amounts in dispute between the Parties shall be resolved by dispute resolution provided for hereunder.

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6.5 Records. Each Party shall keep and maintain all books and records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement, or in verifying such party's performance hereunder, including, without limitation, operating logs, meter readings and financial records. All such records shall be retained by each Party for at least three (3) calendar years following the calendar year in which such records were created.

6.6 Audit.

(a) Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense, upon reasonable notice and during normal business hours, to examine and copy the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Energy and other Products delivered or otherwise provided pursuant to this Agreement. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and

shall bear interest calculated at the Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

(b) Reports Due to Buyer. Seller will provide to Buyer the following information with respect to the Project and the Unit(s):

(i) Upon the request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Project equipment;

(ii) A report summarizing the results of maintenance performed during each Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance or Outage;

(iii) Before the Commercial Operation Date, at the same time as provided to the lenders providing financing for the Project, a monthly progress report stating the percentage completion of the Project and a summary of construction activity during the prior Month;

(iv) Before the Commercial Operation Date, at the same time as provided to the lenders providing financing for the Project, a monthly report containing a summary of construction activity contemplated for the next month; and

(v) [Other safety, performance and financial information and reports to be determined by Parties].

(c) Access Rights. Upon reasonable prior notice (in light of the circumstances) and subject to the safety rules and regulations of Seller, Seller will provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Unit(s) and the Project: (i) for the purpose of reading or testing metering equipment, (ii) as necessary to witness any required generation capability tests necessary to determine the amount of generation capability associated with the Unit(s), (iii) in connection with the operation and maintenance of the interconnection facilities, (iv) to provide tours of the Project to customers and other guests of Buyer (not more than 12 times per year), (v) for purposes of implementing Section 6.6, and (vi) for other reasonable purposes at the reasonable request of Buyer.

6.7 Payments. All amounts due under this Agreement must be sent via wire transfer to an account and address to be specified following the date of this Agreement by each Party in a written Notice to the other Party, as updated from time to time.

ARTICLE VII

LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF LIQUIDATED DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF LIQUIDATED DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF LIQUIDATED DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN. IF NO REMEDY OR MEASURE OF LIQUIDATED DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF THE TERMINATION PAYMENT OR ANY LIQUIDATED DAMAGES EXPRESSLY HEREIN PROVIDED, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNITEE UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11.1 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING FORFEITURES OF DEPOSITS, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE FULL HARM OR LOSS.

ARTICLE VIII

CREDIT AND COLLATERAL REQUIREMENTS

8.1 Timing and Use of Collateral. [Sections 8.1-8.3 are Non-Negotiable Terms]

(a) Development Period Security. On the Execution Date, Seller shall be required to establish collateral in favor of Buyer by providing Buyer with a Letter of Credit from a Qualified Issuer to secure Seller's obligations under this Agreement in the period between the Execution Date and the Initial Delivery Date (the "Development Period Security"). The Development Period Security to be provided on the Execution Date pursuant to this Section 8.1(a) shall be in an amount equal to the product of (x) \$50 [(\$20 for intermittent renewable energy projects)], multiplied by (y) the Guaranteed Capacity (expressed in kilowatts) and shall be maintained in full force and effect by Seller until its expiry pursuant to the terms hereof. By not later than fifteen (15) days after the Effective Date, the amount of the Development Period Security shall be increased to equal the sum of (i) the product of (x) \$100 [(\$40 for intermittent renewable energy projects)], multiplied by (y) the Guaranteed Capacity (expressed in kilowatts). In the event Buyer draws on the Development Period Security to pay Delay Damages, Seller shall promptly, and in all events within fifteen (15) days, replenish the amount of the Development Period Security by the amount drawn. In the event Buyer draws on the Development Period Security to pay Delay Damages, Seller shall promptly, and in all events within fifteen (15) days, replenish the amount of the Development Period Security by the amount drawn and if Seller fails to replenish the Development Period Security to its full amount as required, upon sixty (60) days notice, Buyer may terminate the Agreement. Buyer shall have the right to terminate the Agreement and retain the initial installment of the Development Period Security as liquidated damages if Seller fails to provide the increased amount of Development Period Security within fifteen (15) days after the Effective Date as set forth in this Section 8.1(a). Within ten (10) Business Days following the Initial Delivery Date, Buyer will return the remainder of the Development Period Security to Seller (after satisfaction of any amounts then due with respect to the Development Period Security under the Agreement).

(b) Collateral After Initial Delivery Date. Without regard for the Seller Credit Limit (defined below) in effect at any time, from and after the Initial Delivery Date, Seller must provide Buyer with a Letter of Credit from a Qualified Issuer to be effective no later than the Initial Delivery Date in an amount equal to ten percent (10%) of the then-effective Collateral Requirement (the "Minimum Liquid Collateral"). In addition to the Minimum Liquid Collateral, from and after the Initial Delivery Date, Seller is required to provide Buyer with a Letter of Credit from a Qualified Issuer to be effective no later than the Initial Delivery Date in an amount equal to the positive difference, if any, between the Collateral Requirement (minus the Minimum Liquid Collateral amount) and the Seller Credit Limit (defined below) (the "Additional Liquid Collateral"). Upon delivery of the Minimum Liquid Collateral and the Additional Liquid Collateral, Buyer shall promptly return the Development Period Security to Seller. The term "Collateral Requirement" as used herein shall mean the amount for Seller at any point in time after the Initial Delivery Date that is the lower of (i) the positive amount of the Marked-to-Market Value ("MtM Value") as determined pursuant to Appendix 2, and (ii) a maximum amount determined as \$200/kW [(\$80/kW for intermittent renewable energy projects)] times the

Guaranteed Capacity; provided in the event Seller is not rated at least BBB- by S&P or the equivalent by Moody's or Fitch and does not provide the Affiliate Guarantee from a Seller Guarantor that is rated at least BBB- by S&P or the equivalent by Moody's or Fitch, the Collateral Requirement shall be \$200/kW [(\$80/kW for intermittent renewable energy projects)] multiplied by the Guaranteed Capacity for which Seller shall provide Buyer with a Letter of Credit. The term "Seller Credit Limit" as used herein shall mean the amount of unsecured credit to be extended to Seller between \$0.00 and \$50,000,000.00 as calculated pursuant to the methodology set forth on Appendix 6 hereto based on the Credit Rating of Seller or the Seller Guarantor (if Seller Guarantor has executed an Affiliate Guarantee). If at any time the Credit Rating of Seller or Seller Guarantor (if applicable) falls below investment grade (BBB- by S&P or its equivalent with Moody's or Fitch), Buyer may at its option require Seller to post additional security of an acceptable nature and level subject to the applicable limits set forth above. [Note: Subject to the applicable limits set forth above in this Section 8.1(b), Buyer may require bidder to post acceptable credit support in the form of a Letter of Credit in amounts in excess of those described in Sections 8.1 and 8.2 to maintain compliance with Buyer's credit policies.]

(c) Adjustments to Additional Liquid Collateral During Service Term. During each week during the Services Term, Buyer shall calculate the MtM Value according to the formula set forth in Appendix 2 for the next twenty-four (24) months. Buyer shall be the calculation agent and shall provide weekly notices to Seller of the Collateral Requirement amount to be posted by Seller pursuant to Section 8.1(b). Within three (3) Business Days of such notice, Seller shall post the Additional Liquid Collateral and Minimum Liquid Collateral or Seller shall return such Minimum Liquid Collateral and Additional Liquid Collateral previously posted that is in excess of the sum of Buyer's then-required Minimum Liquid Collateral and Additional Liquid Collateral. Seller shall maintain in full force and effect each of the Minimum Liquid Collateral and the Additional Liquid Collateral in such amounts as may be determined from time-to-time through such date as of which all payment obligations to Buyer arising under this Agreement, including any compensation for the Products, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly such as through set-off or netting), subject to the applicable limits set forth in Section 8.1(b). Buyer shall arrange for the return of the unused portion of the Minimum Liquid Collateral and Additional Liquid Collateral promptly after each of the following have occurred: (1) the Services Term has ended or an Early Termination Date has occurred, as applicable; and (2) all payment obligations of the Seller arising under this Agreement, including any compensation for the Products, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly such as through set-off or netting). Any such Collateral shall not be deemed a limitation of damages.

(d) Use of Collateral. Buyer shall be entitled to draw upon the Collateral posted by Seller for any obligation of Seller arising under this Agreement that is not paid when due, whether or not an Early Termination Date has been declared.

8.2 Letter of Credit and Other Collateral.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article VIII, then not later than thirty (30) days prior to the stated expiration date of the Letter of Credit, the Seller shall renew (or cause the renewal of) each outstanding Letter of Credit, or replace (or cause the replacement of) each such Letter of Credit with one or

more replacement Letters of Credit from a Qualified Issuer in the amount required by this Agreement at the time of such renewal or replacement. In the event (A) the issuer of a Letter of Credit shall fail to meet the requirements of a Qualified Issuer; or (B) the issuer of an outstanding Letter of Credit indicates its intent not to renew such Letter of Credit; or (C) an issuer of a Letter of Credit shall fail to honor the beneficiary's properly documented request to draw on an outstanding Letter of Credit, then, within five (5) Business Days thereafter, Seller shall provide a substitute Letter of Credit from a Qualified Issuer other than the bank that has been downgraded, refused to renew or failed to honor the outstanding Letter of Credit ("Cure"). If Seller does not receive a replacement Letter of Credit from a Qualified Issuer within the time specified in either of the two preceding sentences, it may draw on the full available amount of the Letter of Credit. Amounts drawn in such circumstances shall be held directly by the Buyer bearing interest each day at the rate per annum equal to the Monthly Federal Funds Rate as reported in Federal Reserve Bank Publication H.15-519 or its successor publication (as set on a monthly basis based on the latest month for which such rate is available) on any unapplied balance held by Buyer as described herein. Amounts drawn shall be available to be applied by Buyer for the reasons set forth in Section 8.1(d) under the conditions set forth in the Letter of Credit. If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or such Letter of Credit fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet its obligations pursuant to this Article VIII or Article V, as applicable.

(b) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering a Letter of Credit or other form of Collateral shall be borne by Seller. If Buyer draws on a Letter of Credit due to a failure by Seller to satisfy a payment obligation under the Agreement, Buyer shall not terminate the Agreement or declare a default hereunder if the proceeds from the draw satisfy in full the payment obligation; provided that Seller replenishes such Collateral within three Business Days.

8.3 Buyer's Lien. In the event that Buyer and Seller agree that the collateral requirements of Section 8.1 and Section 8.2 are inadequate to secure Seller's obligation hereunder, Seller shall grant to Buyer a present and continuing perfected Lien on and security interest in all of Seller's right, title and interest in and to the equipment associated with the Project, which Lien shall be subordinate only to the Project Permitted Lien(s), if any, granted to Persons not related to or affiliated with Seller providing construction or term debt financing for the Project. Any Lien and security interest in favor of Buyer set forth in the previous sentence shall be created and evidenced by appropriate security agreements, including a mortgage in favor of Buyer (collectively, the "Project Security Agreement"), to be entered into on or before the Effective Date by the Buyer and Seller in form and substance satisfactory to Buyer.

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Deleted: ; provided, that the amounts secured and given priority by such Project Permitted Lien(s) shall not exceed seventy percent (70%) of the total cost of the Project and such non-affiliated Persons providing construction or term debt financing for the Project shall be permitted to possess a Lien on the remaining thirty percent (30%) of the total cost of the Project that is subordinate to Buyer's Lien described above. The

ARTICLE IX

GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all

taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Regulatory Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Regulatory Charges") on or with respect to the Products arising before and at the Delivery Point, including ad valorem taxes, taxes related to the operation or maintenance of the Unit(s) or the Project, the use or consumption of Gas or other Fuels, and other taxes attributable to the Project or the Unit(s), land, land rights or interests in land for the Unit(s) and the Project. Buyer shall pay or cause to be paid all Regulatory Charges on or with respect to the Products from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). Notwithstanding the foregoing, in the event that a change in Law occurs which imposes future environmental compliance costs in the form of a Btu or carbon tax of general applicability on either Party with respect to this Agreement, the transactions contemplated by the Agreement, the Project or the Unit(s), Seller and Buyer shall treat the tax as a "pass-through" addition to Buyer's Energy Rate to the extent the cost of the tax is actually incurred by Seller. In the event a Party is required by Law or regulation to remit or pay Regulatory Charges which are the other Party's responsibility hereunder, the Party that is assessed shall provided Notice to the Party that is responsible for such amounts due (together with supporting documentation), the assessed Party shall promptly pay such Regulatory Charges when due and invoice the responsible Party in accordance with Article VI, and the responsible Party shall reimburse the assessed Party in full in accordance with Article VI no later than the next Monthly Payment Date, with interest at the Interest Rate from and including the date on which the assessed Party pays the Regulatory Charges until (but excluding) the date on which the responsible Party reimburses the assessed Party (cumulatively, the "Regulatory Charges Payment"). Nothing shall obligate or cause a Party to pay or be liable to pay any Regulatory Charges from which it is exempt under the Law; provided that an exempt Party shall bear the responsibility of proving its exemption as necessary to avoid the unjust imposition of the tax on the other Party.

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ARTICLE X

REPRESENTATION AND WARRANTIES

10.1 Representations and Warranties.

(a) Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that as of the Execution Date:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in the State of Delaware and in each other jurisdiction in which its operations or the ownership of its properties require it to be qualified, except where the failure to so qualify would not have a material adverse effect on its ability to carry out the terms of the Agreement, its financial condition, or its ability to own its properties and transact its business;

(ii) except for the Permits necessary to construct, operate and maintain the Project in the case of the Seller, it has all Permits necessary for it to perform its obligations under this Agreement and the Ancillary Agreements;

(iii) the execution, delivery and performance of this Agreement and the Ancillary Agreements are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it, and it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under this Agreement and the Ancillary Agreements;

(iv) execution and delivery of this Agreement and the Ancillary Agreements and performance or compliance with any provision hereof or thereof will not result in the creation or imposition of any Lien upon its properties, or a breach of, or constitute a default under, or give to any other Persons any rights of termination, amendment, acceleration or cancellation of such Party's articles of incorporation and bylaws (or equivalent) and any agreement to which it is a party or by which any of its respective properties is bound or affected;

(v) this Agreement, the Ancillary Agreements and each other document executed and delivered in accordance with this Agreement have been duly and validly executed and delivered and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(vi) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;

(vii) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(viii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and

(ix) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

(b) Representations and Warranties of Seller. Seller represents and warrants to Buyer that throughout the Services Term:

(i) it will deliver the Products to Buyer free and clear of all Liens, security interests, claims and encumbrances on any interest therein or thereto by any Person;

(ii) the Unit(s) and the Project will be free and clear of all Liens, security interests, claims and encumbrances other than Project Permitted Liens;

(iii) it holds the rights to all Environmental Attributes from the Unit(s) and will transfer such rights to Buyer free and clear of all Liens, security interests, claims and encumbrances on any interest therein or thereto by any Person; and

(iv) it will take no action or permit any Person (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Unit(s) in order to satisfy its Resource Adequacy Requirements.

ARTICLE XI

INDEMNIFICATION AND INSURANCE

11.1 Indemnities.

(a) Indemnity by Seller. Seller shall release, defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, representatives and Affiliates ("Buyer Group") against and from any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to or are in any way connected with (i) the Product(s) prior to and at the Delivery Point; (ii) Seller's operation and/or maintenance of the Unit(s) and the Project; (iii) Seller's actions or inactions, including breach and violation, with respect to this Agreement, the Ancillary Agreements or other agreements related to the development, construction, ownership, operation or maintenance of the Unit(s) and the Project; (iv) any environmental matters associated with the Unit(s) and the Project, including the use, disposal or transportation of Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement; or (v) resulting from Seller's violation of any applicable Law, or requirements of PJM, the Commission, NERC, FERC or other Governmental Authorities; in each case including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, or others, excepting only such damages, claims, losses, liabilities, obligations, suits, proceedings, demands or assessments, as may be caused solely by the fault, willful misconduct or gross negligence of a member of the Buyer Group.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, attorneys, representatives and Affiliates ("Seller Group") against and from any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to or are in any way connected with the Product after the Delivery Point, including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, or others, excepting only such loss, claim, action or suit as may be caused solely by the fault, willful misconduct or gross negligence of a member of the Seller Group.

(c) Notice of Claim.

(i) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of a claim for which it is entitled to indemnity under this Section 11.1, the Party seeking indemnification hereunder (the "Indemnatee") will promptly notify the Party against whom indemnification is sought (the "Indemnitor") in writing of any damage, claim, loss, liability or expense which the Indemnatee has determined has given or could give rise to a claim under Section 11.1(a) or (b). (The written notice is referred to as a "Notice of Claim"). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnatee regarding the claim.

(ii) Notice of Third Party Claim. If an Indemnatee receives notice of the assertion or commencement of a Third Party Claim against it with respect to which an Indemnitor is obligated to provide indemnification under this Agreement, such Indemnatee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) calendar days after such Indemnatee's receipt of notice of such Third Party Claim. Such Notice of Claim will describe the Third Party Claim in reasonable detail, will include copies of all material written evidence thereof and will indicate, if reasonably practicable the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnatee. The Indemnitor will have the right to participate in, or, by giving written Notice to the Indemnatee, to assume the defense of any Third Party Claim at such Indemnitor's own expense and by such Indemnitor's own counsel (as is reasonably satisfactory to the Indemnatee), and the Indemnatee will cooperate in good faith in such defense.

(iii) Direct Claim. Any Direct Claim must be asserted by giving the Indemnitor written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of sixty (60) calendar days from receipt of such notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such sixty-day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnatee will be free to seek enforcement of its rights to indemnification under this Agreement.

(iv) Failure to Provide Notice. A failure to give timely notice or to include any specified information in any notice as provided in this Section 11.1(c) will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, the Indemnitor is not obligated to indemnify the Indemnatee for the increased amount of any claim which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

(d) Defense of Third Party Claims. If, within ten (10) calendar days after giving a Notice of Claim regarding a Third Party Claim to an Indemnitor pursuant to Section 11.1(c)(ii), an Indemnatee receives written notice from such Indemnitor that the Indemnitor has elected to

assume the defense of such Third Party Claim as provided in the last sentence of Section 11.1(c)(ii), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnatee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) calendar days after receiving written notice from the Indemnatee that the Indemnatee believes the Indemnitor has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnatee in respect of all Indemnifiable Losses relating to the matter, the Indemnatee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnatee, the Indemnitor will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnatee for which the Indemnatee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnatee if such settlement provides a full release to the Indemnatee and no requirement that the Indemnatee acknowledge fault or culpability. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnatee for which the Indemnatee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give written notice to the Indemnatee to that effect. If the Indemnatee fails to consent to such firm offer within ten calendar days after its receipt of such notice, the Indemnatee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnatee up to the date of such notice.

(e) Subrogation of Rights. Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnatee against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (i) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (ii) until the Indemnatee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnatee's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, each such Indemnatee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

(f) Rights and Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Section 11.1 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.2 Insurance. [Note: Insurance provisions and limits project-specific and subject to Buyer internal approval] Throughout the term of this Agreement, Seller shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, the following insurance coverages with an insurance company or companies rated not lower than "A" by A.M. Best Company and be responsible for its subcontractors maintaining sufficient limits of the appropriate insurance coverage consistent with Good Utility Practices.

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation and basic employer's liability insurance for all employees in accordance with applicable state and federal labor codes, acts, Laws or statutes.

(ii) Employers' Liability insurance with limits of at least \$[] for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

(i) Comprehensive or commercial general liability insurance written on an occurrence basis with a combined single limit of \$[] million per occurrence, including premises/operations, broad form property damage liability, explosion and collapse hazard coverage, blanket contractual liability encompassing the indemnity provisions of this Agreement, independent contractors, products and completed operations, personal injury, and sudden and accidental seepage and pollution and where applicable, watercraft protection and indemnity liability (and, if such insurance is obtained as part of Seller's general insurance policy for all its projects and assets, such policy, or policies, shall be written on a project-specific basis so that the limits set forth apply solely to the ownership, construction, use, operation and maintenance of Seller's interest in the Project, the Unit(s) and the interconnection facilities).

(c) Business Auto.

(i) Comprehensive Automobile Liability insurance with bodily injury, death and property damage combined single limits of at least \$[] per occurrence covering vehicles owned, hired or non-owned.

(d) Excess Umbrella Liability Insurance.

(i) Excess Umbrella Liability Insurance with a single limit of at least \$[] per occurrence in excess of the limits of insurance provided above.

(e) Additional Insurance Provisions.

(i) Such insurance shall include (1) provisions or endorsements naming Buyer, its Affiliates, directors, officers and employees as additional insureds; (2) provisions that such insurance is primary insurance with respect to the interest of Buyer and such additional insureds and that any insurance maintained by Buyer is excess and not contributory insurance with the insurance required hereunder; (3) a cross-liability or severability of insurance interest clause; (4) provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to Buyer; and (5) provisions by which the insurer waives all rights of subrogation against Buyer and the additional insureds listed above. Seller shall provide Buyer with certificates of insurance evidencing the policies, provisions and endorsements listed above within ten (10) days after they have been obtained. In addition, upon request, Seller shall provide Buyer with copies of the insurance policies evidenced by such certificates. The insurance coverage described above in this section shall be primary and not excess or contributing with respect to any other coverage available to Seller or to its

Affiliates and shall not be deemed to limit Seller's liability under this Agreement.

(ii) Reviews of such insurance may be conducted by Buyer on an annual basis and in addition, Buyer may inspect the original policies or require complete certified copies, at any time.

(iii) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(iv) The insurance carrier or carriers and form of policy shall be subject to review and approval by Buyer.

ARTICLE XII

EVENTS OF DEFAULT; REMEDIES

12.1 Events of Default.

(a) The Seller will be deemed a "Defaulting Party" upon the occurrence of any of the following (each a "Seller's Event of Default"):

(i) Failure to deliver any Product produced by the Unit(s) to Buyer as required under the Agreement on five (5) occasions in any calendar year, and intentional delivery of any such Product to any third party if not expressly permitted under the Agreement.

(ii) Any material asset of Seller constituting part of or used in connection with the Project is taken upon execution or by other process of Law or if taken upon or subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within twenty-one (21) days after its levy.

(iii) Upon the occurrence of any material misrepresentation or omission in any metering (or submetering) or any report or notice of a Unit's availability and capability or Outage required to be made or delivered by Seller to Buyer, or undue delay or withholding of such data, report or Notice of a Unit's availability and capability or Outage, which misrepresentation, omission or undue delay or withholding is (i) not cured within five (5) Business Days of written notice provided by Buyer and (ii) is caused by Seller's willful misconduct, gross negligence or bad faith.

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(iv) Seller fails to post, maintain, substitute, supplement, replenish or renew when due the Development Period Security and such failure continues for five (5) days after Notice thereof is received, except for the failure to post the remainder of the Development Period Security fifteen (15) days after the Effective Date, as to which no Notice is required.

(v) Seller fails to comply with the Resource Adequacy Requirements as and to the extent required in the Agreement which failure continues for sixty (60) days after Notice thereof is received from Buyer, and provided such failure shall not constitute a "Seller's Event of Default" if Buyer has failed to compensate Seller to the extent required in Section 3.14.

(vi) During the Services Term, the Equivalent Availability Factor of the Project is below sixty percent (60%) for a period of twelve (12) consecutive months for a reason other than a Force Majeure Event. [Unit Contingent]

Deleted: (vi) During the Services Term the UCAP of the Unit(s) is below 70% of the then-applicable Contract Capacity for a period of six (6) consecutive months and such reduction in UCAP is not due to a Force Majeure Event. [Firm Power] ¶

(vii) During the Services Term, the Equivalent Availability Factor of the Project is below sixty percent (60%) for a period of twenty-four (24) consecutive months due to a Force Majeure Event over a rolling 12 month period. [Unit Contingent]

Deleted: (vii) During the Services Term, a Force Majeure Event results in the UCAP of the Unit being less than 70% of the then-applicable Contract Capacity for a period of twelve (12) consecutive months. [Firm Power] ¶

(viii) Seller fails to comply with the collateral security requirements in Article VIII and such failure continues for five (5) Business Days after Notice thereof is received.

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(ix) If a Project Security Agreement is agreed to by the Parties, such Project Security Agreement (after the effective date thereof) shall cease, except in accordance with its terms, to be effective to grant a perfected Lien and security interest in Seller's right, title and interest in and to the Project, or such Lien and security interest shall be subordinate to any other Lien or security interest other than Project Permitted Lien(s).

(x) A failure to complete the conditions precedent to the Initial Delivery Date on or before the Date Certain or a delay in completing any Critical Milestone of more than twelve (12) months (in each case, as extended due to a Force Majeure Event in accordance with Section 5.5, if applicable).

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(b) A Party will be deemed a Defaulting Party upon the occurrence of, including but not limited to, any of the following (each a "Party's Event of Default"):

(i) A Party fails to pay an amount when due hereunder and such failure continues for ten (10) Business Days after notice thereof is received.

(ii) A Party fails to perform any of its material obligations under this Agreement and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) days after Notice thereof is received, specifying the Event of Default; provided, however, that such period shall be extended for an additional reasonable period if cure cannot be effected in thirty (30) days and if corrective action, reasonably calculated to cure the default within a reasonable period of time, is instituted by the Defaulting Party within the thirty (30) day period and so long as such action is diligently pursued until such default is corrected; but not to exceed ninety (90) days cumulatively.

(iii) any default shall occur under any of the Ancillary Agreements or the Interconnection Agreement and such default shall continue beyond any period of grace

provided therein with respect thereto.

(iv) A Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian of its assets (including, in the case of Seller for a substantial part of the Unit(s) or the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.

(v) Absent the consent or acquiescence of a Party, appointment of a trustee, receiver or custodian of its assets (including in the case of Seller, for a substantial part of the Unit(s) or the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within sixty (60) days.

(vi) Any Permit necessary for a Party to be able to perform all of the transactions contemplated by the Agreement is not received, expires or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation or suspension thereof, by reason of the action or inaction of such Party and such failure to obtain, expiration, revocation or suspension creates a material adverse impact on the other Party.

(vii) Upon the occurrence of any material breach of any representation, covenant or warranty made by a Party in this Agreement, thirty (30) days after the written Notice from the other Party that any material representation, covenant or warranty made in this Agreement is false, misleading or erroneous in any material respect without the breach having been cured.

12.2 Declaration of Early Termination Date and Calculation of Termination Payment.

(a) Upon the occurrence of an Event of Default, the non-defaulting Party ("Non-Defaulting Party") shall have the right to (i) send Notice, designating a day, no earlier than the day such Notice is deemed to be received (as provided in Section 14.1) and no later than 20 days after such Notice is deemed to be received (as provided in Section 14.1), as an early termination date of this Agreement ("Early Termination Date"), to accelerate all amounts owing between the Parties, terminate the Services Term effective as of the Early Termination Date and collect liquidated damages in the amounts set forth below in this Section 12.2 ("Termination Payment"); (ii) withhold any payments due to the Defaulting Party under this Agreement; (iii) suspend performance; and (iv) subject to the terms of the Agreement, exercise any other right or remedy available at Law or in equity, other than specific performance, to the extent otherwise permitted under this Agreement.

(b) Prior to commencement of construction of the Unit(s) by Seller, if Buyer is the Defaulting Party, Buyer will pay to Seller as liquidated damages a Termination Payment equal to the costs reasonably incurred by Seller in the development of the Unit(s) plus or a breakage fee equal to \$10 per kW multiplied by the Guaranteed Capacity. Prior to the Initial Delivery Date, if Buyer is the Defaulting Party and construction of the Unit(s) has commenced, the Termination Payment to be paid by Buyer shall be calculated in the manner set forth in Section 12.2(d) below.

(c) ~~If Seller is the Defaulting Party, Seller will pay to Buyer as liquidated~~

Deleted: Except for termination on account of Seller's failure to meet the original or extended Permitting Deadline, prior to the Initial Delivery Date,

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damages a Termination Payment equal to the full amount of the Termination Fee defined in Section 5.4, plus the amount of any unpaid Delay Damages due Buyer pursuant to Section 5.4 as of the date of termination. ▽

Deleted: In the event of termination of the Agreement due to Seller's failure to meet the original or extended Permitting Deadline, Buyer shall retain as liquidated damages the amount specified in Section 5.2(c).

(d) On and after the Initial Delivery Date, the Termination Payment will be, subject to subsection (e) below, the aggregate of all Settlement Amounts netted into a single amount, where the "Settlement Amount" is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the liquidation of this Agreement as of the Early Termination Date; provided that in the event the Non-Defaulting Party experiences Gains, Gains shall not be netted against Costs in determining such Settlement Amount, and the Non-Defaulting Party shall be compensated in full for all Costs it incurs.

(e) Termination Payments shall be payable in accordance with Section 6.4. Disputes regarding the Termination Payment shall be determined in accordance with Article XIII. In no event will the Non-Defaulting Party be required to pay its Gains to the Defaulting Party.

12.3 Right of Set-off and Payments by Non-Defaulting Party. The Non-Defaulting Party shall be entitled, at its option, to setoff against any amounts owed to the Defaulting Party by the Non-Defaulting Party under the Agreement, the Interconnection Agreement, the Ancillary Agreements or otherwise any amounts payable by the Defaulting Party to the Non-Defaulting Party under the Agreement, the Interconnection Agreement, the Ancillary Agreements or otherwise. This section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law or otherwise). Notwithstanding any provision to the contrary contained in the Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Agreement until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that all obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under the Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed.

12.4 Termination Upon Consolidation of Seller. [Non-Negotiable Term] In addition to the Event's of Default set forth in this Article 12, Buyer has the right to terminate the Agreement with no further obligation or liability on the part of either Party if at any time during the term of the Agreement Buyer's independent outside auditing firm determines that Buyer must consolidate Seller in its financial statements under FIN No. 46 due to Seller's actions or other changes in circumstance. Prior to terminating the Agreement pursuant to this Section 12.4, Buyer shall provide Seller with prior written notice of such termination and thirty (30) days in which to cure the action or circumstances identified by Buyer's independent outside auditing firm as triggering consolidation under Fin No. 46. In the event Seller is unable to cure the action or circumstance triggering consolidation, as determined by Buyer, Seller will have thirty (30) days to appeal Buyer's termination to the Commission for expedited review, which appeal will have the effect of staying Buyer's termination pending a Commission review of the measures available to Seller to avoid consolidation and termination of the Agreement as described herein.

12.5 Rights And Remedies Are Cumulative. Except as provided herein, the rights and remedies of a Party pursuant to this Article XII shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE XIII

DISPUTE RESOLUTION

13.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article XIII. Notwithstanding the foregoing, either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of procedure set forth in this Article XIII.

13.2 Management Negotiations. The parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may initiate resolution of the dispute as provided in Section 13.3. All negotiations pursuant to this clause are confidential.

13.3 Dispute Resolution Before Commission. If the dispute cannot be so resolved by negotiation as set forth in Section 13.2 above, it shall be resolved at the request of any Party through the dispute resolution process administered by the Commission.

ARTICLE XIV
MISCELLANEOUS

14.1 Notices. Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "Notify"), all notices, requests, statements or payments shall be made to the Parties using the contact information set out below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the Notice is received or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt. Notwithstanding the foregoing, Notices of Outages or other intra-day information regarding the Unit(s)' operations are to be provided as required pursuant to Sections 3.5 and 3.10; and any scheduling and dispatching shall be done pursuant to the Operating Procedures.

To Buyer: Delmarva Power & Light Company [Address]
 [Address]
 [Phone]
 [Fax]
 Attn:

with a copy to: [_____]
 [Address]
 [Address]
 [Phone]
 [Fax]
 Attn:

to Seller: [_____]
 [Address]
 [Address]
 [Phone]
 [Fax]
 Attn:

with a copy to: [_____]
 [Address]
 [Address]
 [Phone]
 [Fax]
 Attn:

14.2 Changes to Notice and Invoicing Information. The address and contact information to which notices or invoices shall be mailed, or amounts paid, may be changed from time to time by either party by Notice served as hereinabove provided.

14.3 Force Majeure Event.

(a) Effect of Force Majeure Event. Except as provided in Section 12.1(a)(vii) and 12.1(a)(ix), a Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure Event, and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure or delay of performance. Notwithstanding the forgoing, (i) a failure to make payments accrued prior to the Force Majeure Event when due shall not be excused; and (ii) from and after the Initial Delivery Date, the unavailability of the Capacity of the Unit(s) due to a Force Majeure Event shall not relieve Seller from the effects of the Unit(s) being considered unavailable for purposes of Article IV of the Agreement. The burden of proof for establishing the existence and consequences of a Force Majeure Event lies with the Party initiating the claim.

(b) Notice of Force Majeure Event. In addition to satisfying the notification provisions set forth in Section 3.5(b), as applicable, within two (2) Business Days of the commencement of a Force Majeure Event, the Party desiring to invoke a Force Majeure Event as a cause for delay in its performance of, or failure to perform, any obligation (other than the payment of money) hereunder, shall provide the other Party Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event including the expected duration and effect of such Force Majeure Event. Failure to provide timely Notice constitutes a waiver of a claim of a Force Majeure Event. Promptly, but in any event within ten (10) days, after a Notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such Force Majeure Event.

(c) Mitigation of Force Majeure. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such Force Majeure Event. The Parties shall take all reasonable steps to ensure resumption of normal performance under this Agreement after the cessation of any Force Majeure Event.

14.4 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

14.5 Assignment. Without Buyer's prior written consent, Seller shall not assign this Agreement or its rights hereunder or assign or transfer control of the Unit(s) or the Project, in each case including to Affiliates and including direct and indirect transfers and assignments. Buyer's consent in each case set forth above in this Section 14.5 shall not be unreasonably

withheld upon a showing of the proposed assignee's technical and financial capability to fulfill the requirements of Seller, as determined by Buyer in its reasonable discretion. Subject to the rights of senior secured lender(s) to the Project, Seller shall obtain Buyer's prior written consent (not to be unreasonably withheld) to Changes of Control, such consent to be granted upon a showing that such Change in Control does not materially adversely affect Seller's creditworthiness or qualification to perform Seller's obligations under the Agreement. Notwithstanding the foregoing, Seller may, without relieving itself from liability hereunder, transfer, sell, pledge, encumber or assign the Unit(s), the Project, this Agreement or the accounts, revenues or proceeds under the Agreement to unrelated third parties for the purposes of obtaining project financing for the Unit(s). In connection with any assignment made pursuant to the previous sentence, at the request of Seller, Buyer shall execute a consent to assignment substantially in the form attached hereto as Appendix 8; and provided further, Seller shall be responsible for Buyer's reasonable costs associated with review, negotiation, execution and delivery of such documents, including attorneys' fees.

14.6 Choice of Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

14.7 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. All indemnity rights shall survive the termination of this Agreement. All provisions relating to limitations of liability shall survive without limit. This Agreement shall be binding on each Party's successors and permitted assigns. Subject to Section 14.15, nothing in this Agreement shall in any way restrict or otherwise limit the rights of either Party under Sections 205 and 206 of the Federal Power Act.

14.8 Confidentiality. Throughout the Contract Term, neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than: (i) the Party's employees, lenders, counsel, accountants, advisors or rating agencies who have a need to know such information and have agreed to keep such terms confidential on terms commensurate with the terms set forth in this Section 14.8; (ii) in order to comply with any applicable Law, regulation, or any exchange, control area or PJM rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"); (iii) in order to comply with any applicable regulation, rule, or order of the Commission or FERC; or (iv) as Buyer deems necessary in order to demonstrate the reasonableness of its actions to duly authorized Governmental Authorities or regulatory agencies including the Commission, the Delaware Department of Natural Resources and Environmental Control or any division thereof, and any other regulatory agency which claims jurisdiction over the subject matter of the Agreement or its subject matter. In connection with requests made pursuant to clause (ii) of this Section 14.8 ("Disclosure Order") and disclosures pursuant to clause (iii) or (iv) ("Regulatory

Disclosures”) each Party shall, to the extent practicable, use reasonable efforts to: (i) notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or making the Regulatory Disclosures or (ii) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce or seek relief in connection with the confidentiality obligation set forth in this Section. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section.

14.9 Recordkeeping. The Parties shall, for five years after creation or such longer period as may be required by applicable Law, each keep and maintain accurate and detailed records relating to the Unit’s(s’) hourly deliveries of Energy and other Products and Fuel consumption and such other information (including financial statements and information) as required to support the amounts due and payable as between the Parties pursuant to this Agreement. Such records shall be made available by the Party holding such records to the other Party for inspection during normal business hours upon reasonable Notice.

14.10 Entire Agreement; Severability. This Agreement, the Interconnection Agreement and the Ancillary Agreements, including the exhibits, schedules, appendices, documents, certificates and instruments referred to herein or therein and the other contracts, agreements and instruments contemplated hereby or thereby, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Agreement, the Interconnection Agreement and the Ancillary Agreements supersede all prior agreements and understandings between the Parties with respect to the transactions contemplated by this Agreement. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties. Any determination that specific parts of this Agreement are severable shall not affect in any way the Parties’ assent to this Agreement, the Interconnection Agreement and the Ancillary Agreements, including the exhibits, schedules, appendices, documents, certificates and instruments referred to herein or therein and the other contracts, agreements and instruments contemplated hereby or thereby, as one integrated, non-severable contract.

14.11 Treatment of Agreement and Related Documents. Seller acknowledges and agrees that this Agreement, the Interconnection Agreement and the Ancillary Agreements including the exhibits, schedules, appendices, documents, certificates and instruments referred to herein or therein and the other contracts, agreements and instruments contemplated hereby or thereby to which both Buyer and Seller or their Affiliates are or become parties, while each independently setting forth the exclusive terms and conditions pertaining to the subject matter thereof, for purposes of contract interpretation, do collectively provide Buyer rights and interests in the Project related to and/or necessary for the Project, and, accordingly, Seller agrees, for itself and its successors and assigns, that all of such contracts shall be treated as an integrated economic whole, and therefore, in accordance with the standards in Section 14.15, in any bankruptcy or insolvency proceeding involving it or any of its Affiliates, all such contracts shall either all be

assumed or all be rejected to the extent that assumption or rejection is permitted by Law.

14.12 Conflicts With Ancillary Agreements. Except as expressly provided herein or therein, in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Interconnection Agreement and any Ancillary Agreement, the terms of this Agreement shall prevail.

14.13 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

14.14 Forward Contract. The Parties acknowledge and agree that the Agreement and the transactions consummated thereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Seller is a "forward merchant" within the meaning of the United States Bankruptcy Code.

14.15 Future Treatment. The Parties agree and acknowledge that the standard of review for any avoidance, breach, rejection, termination, or other cessation of performance or changes to any portion of this integrated, non-severable Agreement (as described in Section 14.11) over which FERC has jurisdiction, whether proposed by the Seller, the Buyer, a non-party, or FERC acting sua sponte, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Co.*, 350 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956). The Parties further agree and acknowledge that the standard of review for any proposed avoidance, breach, rejection, termination, or other cessation of performance or changes to any portion of this integrated, non-severable Agreement (as described in Section 14.11) over which the United States District Court or the United States Bankruptcy Court for the district in which a proceeding is pending, whether proposed by the Seller, the Buyer, or a non-party, shall be the standard of review set forth in *In re Mirant Corp.*, 318 B.R. 100 (N.D. Tex. 2004). In connection with the application of such standards, the Parties agree that any failure to perform the Agreement on behalf of Seller would cause a disruption in the supply of electricity and may lead to an increase in rates paid by Buyer's customers. Nothing in this paragraph shall adversely affect, in any way, the protections afforded to a non-debtor counterparty under the United States Bankruptcy Code.

14.16 Certain Attorneys' Fees and Expenses. Seller agrees to pay to the Buyer, upon written demand from the Buyer from time to time, the amount of all expenses and costs, including reasonable attorneys' fees and expenses, paid or incurred by the Buyer (i) after any of the obligations due to Buyer under this Agreement are not paid or performed when due (whether by demand, acceleration or otherwise), which arise as a result of such failure to pay or perform, and (ii) after a default or an Event of Default shall occur, which arise as a result of such Event of Default. Seller also agrees to pay to the Buyer, upon written demand by the Buyer from time to time, interest on the outstanding amount of such expenses and costs paid by the Buyer, from the date of the Buyer's demand for payment of such expenses until the same are paid in full, at the highest rate provided herein.

14.17 Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or acceptance of any Product or make or receive other Notices and perform other functions related to the administration of the Agreement on behalf of such Party ("Authorized Representative"). Such Notice shall include the scope of the Authorized Representative(s) individual authority and responsibilities. Either Party may change its designation of such persons and the scope of their individual authorities and responsibilities from time to time by

providing Notice.

14.18 Recordings. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the Recordings pursuant to this Agreement.

14.19 Obligation to Act in Good Faith, Etc. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, where the Agreement requires the consent, approval or similar action by a Party, such consent, approval, or action shall be made or given in such Party's sole discretion.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed by its authorized representative as of the date first written above.

Seller: [Counterparty] Buyer: DELMARVA POWER & LIGHT COMPANY

By: _____ By: _____

Name: Name:

Title: Title:

APPENDIX 1

THE UNIT(S) AND THE PROJECT

APPENDIX 2

MARKED-TO-MARKET VALUE

The Marked-to-Market Value or MtM Value as of any week during the Services Term will be equal to the net sum of the following:

1. Net Capacity Value: the gross capacity value will be the PJM [RPM] capacity (or a mutually agreed-upon equivalent) for the Contract Year times the Agreement's Net Capability obligations expressed in kW. The gross capacity value will be measured for each month of the rolling 24-month period following the week for which the calculation is being made (the "Relevant Period"). To determine the Net Capacity Value, from such gross capacity value will be subtracted the aggregate Capacity payments to be made by Buyer for each month of the Relevant Period expected under the Agreement for the Contract Capacity Seller is obligated to deliver.

2. Net Energy Value: the gross energy value will be the NYMEX Henry Hub end-of-day monthly forward price in (\$/MMBtu) times an 8,000 Btu/kWh implied heat rate divided by 1000 times the anticipated quantity of Energy to be delivered in each month of the Relevant Period following the week for which the calculation is being made. To determine the Net Energy Value, from such gross energy value will be subtracted the aggregate Energy payments anticipated for the quantity of Energy to be delivered in each month of the Relevant Period under the Agreement for the Energy Seller is expected to deliver.

[Note: Delmarva reserves the right to change the implied heat rate subject to the nature of the Agreement.]

APPENDIX 3

FORM OF MONTHLY CONSTRUCTION PROGRESS REPORT

APPENDIX 4

OUTAGE/AVAILABILITY NOTIFICATION FORM AND PROCEDURES

APPENDIX 5

CALCULATION OF MONTHLY CONTRACT CAPACITY PAYMENT AVAILABILITY ADJUSTMENT

[Appendix relevant for Unit-Contingent bids other than those for intermittent renewable energy facilities]

“AA” (Availability Adjustment) as used in Section 4.1(b) of the Agreement is the rolling average of the Monthly Adjusted Availability Factors (“MAAFs”) for the previous 12 months, subject to the following: (a) the rolling average of AA will be capped at 1.05 and (b) for each percentage that the rolling average of the MAAFs is below 0.90 for the previous 12 months, there will be a 3% reduction in the AA (but the AA shall never be less than 0.0). For example, if the 12-month rolling average of the MAAFs is 0.85, the AAF will be 0.75. [A complete detailed definition will be set forth in the PPA.]

The Monthly Adjusted Availability Factor (“MAAF”) shall be the product of the Equivalent Availability Factor for the particular month (“MEAF”) multiplied by the Monthly Adjustment Factor (“MAF”) set forth below divided by the Target Equivalent Availability Factor (“TEAF”) for the particular month. $MAAF = (MEAF * MAF) / TEAF$.

The TEAF is equal to the bidder’s annual Target Equivalent Availability Factor for the particular month, set out in Section 4.1 of the Agreement.

MEAF is the Equivalent Availability Factor (“EAF”) for the month, except if the Project’s monthly average off-peak hourly EAF exceeds the monthly average on-peak hourly EAF, the EAF for on-peak hours will be used in determining MEAF for the month. For example, if the EAF in June is 90%, but the EAF in off-peak hours is 95% and the EAF in on-peak hours is 85%, the MEAF in June will be 85%.

MAF is the Monthly Adjustment Factor.

MAF is as follows:

January	1.0
February	1.0
March	0.9
April	0.8
May	0.8
June	1.2
July	1.3
August	1.3
September	1.2
October	0.8
November	0.8
December	0.9

Example: TEAF in June is 93%. MEAF in June is 85%. $MAF = 1.2$. $MAAF = (.85 * 1.2) / .93 = 1.097$.

For the first 12 operating months of the Project, AA shall be calculated by using historical operating data for the Project where available and by using proxy data for other months assuming that the Project has

achieved the TEAF for such months. For example, if the Project becomes Commercially Operable in March and has operated through December, the capacity payments for December will be based on an AA calculated with plant performance data from March through December with a MAAF of 1.0 for January and February.

APPENDIX 6

METHODOLOGY FOR SELLER CREDIT LIMIT

The Seller Credit Limit, as calculated by Buyer, shall be the product of the Tangible Net Worth of Seller, or Seller Guarantor if Seller Guarantor has entered into an Affiliate Guarantee, times the percentage specified in the table below corresponding to such entity's then current Credit Rating with the specified rating agencies, up to the amount of the cap specified below applicable to the corresponding Credit Rating.

S&P Rating	Moody's Rating	Fitch Rating	Total Tangible Net Worth	Seller Credit Limit (Cap)
AAA to AA-	Aaa to Aa3	AAA to AA-	10%	\$50,000,000
A+ to A-	A1 to A3	A+ to A-	8%	\$40,000,000
BBB+ to BBB	Baa1 to Baa2	BBB+ to BBB	6%	\$30,000,000
BBB-	Baa3	BBB-	4%	\$20,000,000

If there is a difference among the Credit Ratings of the listed rating agencies, the lowest rating shall be used. If Seller (or Seller Guarantor if applicable) does not have a Credit Rating from one of the three credit rating agencies set forth above, the Seller Credit Limit shall be deemed to be zero.

The Seller Credit Limit shall be recalculated, and the amount of the Letters of Credits covering the Minimum Liquid Collateral and the Additional Liquid Collateral shall be appropriately adjusted, based on Seller's (or Seller Guarantor's, if applicable) most recent fiscal year-end audited financial statements or within five (5) Business Days of any change in Seller's (or Seller Guarantor's, if applicable) long-term senior unsecured Credit Rating.

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**CERTAIN REQUIREMENTS FOR INTERCONNECTION
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APPENDIX 8
FORM OF CONSENT TO ASSIGNMENT

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ANCILLARY SERVICES

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SCHEDULE 5

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SCHEDULE 6
SCHEDULING PARAMETERS

ATTACHMENT XI – QUESTION 36 – PPA REDLINE FOR ALT PROPOSAL

[ALTERNATE CASE PROPOSAL]

**[STANDARD FORM OF]
POWER PURCHASE AGREEMENT**

between

DELMARVA POWER & LIGHT COMPANY

("Buyer")

and

[_____]

("Seller")

[Date]

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STANDARD FORM

POWER PURCHASE AGREEMENT

This Power Purchase Agreement ("Agreement") is made between Delmarva Power & Light Company, a Delaware corporation ("Buyer") and [____], a [____] ("Seller") as of [____]. Seller and Buyer are referred to individually as a "Party" or collectively as "Parties".

W I T N E S S E T H

WHEREAS, pursuant to the State of Delaware's Electric Utility Retail Customer Supply Act of 2006, and at the direction of the Delaware Public Service Commission (the "Commission"), the Director of the Office of Management and Budget, the Controller General and the Energy Office of the State of Delaware (collectively with the Commission, the "Agencies"), Buyer has solicited proposals for the construction of new electric generating resources within the State of Delaware to result in Buyer entering into a power purchase agreement to buy electric power (capacity, energy and ancillary services) to supply a portion of Buyer's Delaware Standard Offer Service ("SOS") customer requirements.

WHEREAS, Seller submitted a proposal to Buyer for the sale of Capacity and the associated Energy, Ancillary Services and Environmental Attributes from the Unit(s).

WHEREAS, at the direction of the Agencies, Buyer and Seller have negotiated the terms and conditions pursuant to which, subject to regulatory approvals and the satisfaction of other conditions precedent, Seller will sell to Buyer and Buyer will buy from Seller Capacity, Energy, Ancillary Services and Environmental Attributes.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and in the other Ancillary Agreements, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound and to bind their respective successors and assigns, the Parties do hereby mutually agree as follows;

ARTICLE I: GOVERNING TERMS

1.1 Definitions. As used in this Agreement, the following terms have the meanings set forth below:

"Additional Liquid Collateral" has the meaning set forth in Section 8.1(b).

"Affiliate" means, with respect to any Person, (i) each Person that, directly or indirectly, controls or is controlled by or is under common control with such designated Person, (ii) any Person that beneficially owns or holds 10% or more of any class or voting securities of such designated Person or 10% or more of the equity interest in such designated Person, and (iii) any Person of which such designated Person beneficially owns or holds 10% or more of any class of voting securities or in which such designated Person beneficially owns or holds 10% or more of the equity interest. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to

any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Affiliate Guarantee" shall mean an affiliate guarantee entered into by the Seller Guarantor in favor of Buyer covering all of Seller's obligations and liabilities hereunder after the Initial Delivery Date, subject to a limit of liability of \$200 per kW times the Guaranteed Capacity, in form and substance satisfactory to Buyer.

"Agencies" has the meaning set forth in the first recital hereto.

"Agreement" has the meaning set forth in the introductory paragraph hereto.

"Ancillary Agreements" means, individually or collectively, any Affiliate Guarantee, the Project Security Agreement, and each of the other agreements entered into by the Parties in connection herewith or therewith. [list others as applicable]

"Ancillary Services" means all products deemed to be "Ancillary Services" by PJM and FERC as of the Execution Date or a future date during the Contract Term, including but not limited to reactive power, regulation (including load following), spinning reserves, non-spinning reserves, and replacement reserves associated with the Unit(s) (as initially identified on Schedule 1 hereto).

"Authorized Representative" has the meaning set forth in Section 14.17

"Availability Adjustment" or "AA" has the meaning set forth in Section 4.1(b).

"British Thermal Unit" means the quantity of heat required to increase the temperature of one pound of water from 59°F to 60°F.

"Btu" means one British Thermal Unit.

"Business Day" means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. EPT.

"Buyer" means Delmarva Power & Light Company, a Delaware corporation.

"Buyer Group" has the meaning set forth in Section 11.1(a).

"Buyer's Schedule" has the meaning ascribed in Section 3.5(b)(iv).

"Capacity" means, as of any time, the maximum capability of the Unit(s) to generate electric energy measured in megawatts, after deduction for auxiliary loads and station electrical uses, including any variation in the form of capacity including installed capacity, locational capacity or similar products.

"Capacity Payment Rate" or "CPR" has the meaning set forth in Section 4.2(a)(i).

"Capacity Resource" means a generating unit or resource designated and committed by a Load Serving Entity to serve its obligation under the PJM RAA.

"Change of Control" means any transfer, sale, assignment, or other disposition of shares of or interests in Seller having the result (directly or indirectly and either immediately or subject to the happening of any contingency) of changing the entity or entities which ultimately possesses the power (directly or indirectly and either immediately or subject to the happening of any contingency) to direct or cause the direction of the management or policies of Seller (from the entity or entities possessing such power as to Seller as of the date of execution of the Agreement), whether such change is voluntary or involuntary on the part of Seller.

"Collateral" shall mean the Development Period Security, Minimum Liquid Collateral, Additional Liquid Collateral, the Affiliate Guarantee, the Project Security Agreement and any other collateral to be provided by Seller to Buyer pursuant to Article 8 (individually or collectively as the context requires).

"Collateral Requirement" has the meaning set forth in Section 8.1(b).

"Commercially Operable" with respect to any Unit, is a condition occurring after such time as all performance testing has been satisfactorily completed, Mechanical Completion has occurred, commissioning is complete, the Unit has demonstrated a net Capacity of not less than [95]% of the Guaranteed Capacity, the Unit is capable of regular commercial operation as reasonably determined by Buyer, and the Unit has been accepted as a Capacity Resource of PJM.

"Commercial Operation Date" the date on which each and every Unit of the Project has become Commercially Operable. The Commercial Operation Date shall be no earlier than [_____].

"Commission" has the meaning set forth in the first recital hereto.

"Contract Capacity" is the maximum MWs of Net Capability rated for the applicable summer or winter rating period that Seller is offering to make available to Buyer in each month of the Services Term, as set forth on Schedule 2.

"Contract Term" has the meaning set forth in Section 2.1.

"Contract Year" means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

"Credit Rating" means, with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by a Rating Agency, or if such entity does not have

a unsecured, senior long-term debt rating, then the rating assigned to such entity as its “issuer rating” by a Rating Agency.

“Critical Milestones” means each of (i) completion of the Permitting Milestone by not later than the Permitting Deadline, (ii) the execution and delivery of the Interconnection Agreement by not later than [date], (iii) closing of debt or other third party financing sufficient to cause the Unit(s) to achieve the Initial Delivery Date by not later than [date] (unless Seller demonstrates to Buyer’s reasonable satisfaction as of the Effective Date that it has equity financing sufficient to cause the Project to achieve the Initial Delivery Date), (iv) Seller’s issuance of unlimited notice to proceed under the EPC Contract by not later than [date], (v) clearing of the Site and ground breaking by not later than [date], (vi) completion of the Electrical Interconnection Facilities, all Transmission Upgrades and installation of the electrical metering and submetering as required pursuant to Section 5.2(a) by not later than [date] prior to the expected Initial Delivery Date, (vii) delivery at the Site of the major equipment comprising the Project’s power island by not later than [date], and (viii) achievement of Mechanical Completion by not later than [date]. [To be determined by the Parties on a project-specific basis.]

“Cure” has the meaning set forth in Section 8.2(a).

“Date Certain” has the meaning set forth in Section 5.4.

“Default Interest Rate” means the Interest Rate plus three percent (3%); provided, however, the Default Interest Rate shall never exceed the maximum rate permitted by applicable Law.

“Defaulting Party” has the meaning set forth in Section 12.1.

“Delay Damages” has the meaning set forth in Section 5.4.

“Delivery Point” of all Energy delivered pursuant to the Agreement shall be [Bidder to propose either (a) the Delmarva Zone or (b) the Interconnection Point].

“Delmarva Zone” means that aggregate of busses as listed on the PJM website and aggregated by Buyer.

“Design Capacity” means, for the Unit(s), the highest Capacity of the Unit(s) that can be reliably and safely made available on a sustained basis, as measured at the Delivery Point, at ISO Conditions, which is set forth as of the Execution Date in Appendix 1. **[Unit Contingent]**

“Development Period Security” has the meaning set forth in Section 8.1(a).

“Direct Claim” means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim.

Deleted: “Deviation Charges” has the meaning set forth in Section 3.5(d). ¶

“Disclosing Party” has the meaning set forth in Section 14.8.

“Disclosure Order” has the meaning set forth in Section 14.8.

“Eastern Prevailing Time” or “EPT” means Eastern Standard Time or Eastern Daylight Savings

Time, whichever is in effect on any particular date.

"Early Termination Date" has the meaning set forth in Section 12.2(a).

"Effective Date" is a date on which the conditions precedent to the full effectiveness of this Agreement occur as set forth in Section 5.1.

"Electrical Interconnection Facilities" means the apparatus required to safely and reliably interconnect with and deliver the Products at the Guaranteed Capacity to the Delivery Point by means of the PJM Grid, including connection, transformation, switching, metering, communications, control, and safety equipment related thereto.

"Emergency" means (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (ii) a Fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce Fuel; or (iii) a condition that requires implementation of Emergency procedures as defined in the PJM Manuals.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours, net of auxiliary loads and station electrical uses (unless otherwise specified).

"Energy Rate" or "ER" shall have the meaning set forth in Section 4.2(a).

"Environmental Attributes" means "Renewable Energy Credits" and "Generation Attributes" of the Unit(s) that the Renewable Energy Credits represent (as both terms are defined by the Commission's Rules and Procedures to Implement the Renewable Energy Portfolio Standard).

"EPC Contract" means the Seller's engineering, procurement and construction contract with the EPC Contractor for the construction of the [Project][Unit(s)].

"EPC Contractor" means the engineering, procurement and construction contractor responsible for constructing the [Project][Unit(s)] pursuant to the EPC Contract.

"Equitable Defenses" means any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

"Event of Default" shall mean a Seller's Event of Default and/or a Party's Event of Default, as such terms are defined in Section 12.1.

"Excused Events" means either (i) the Buyer's failure to provide for transmission service from and after the Delivery Point, or (ii) a Force Majeure Event that is claimed by Buyer.

"Execution Date" shall mean the date first above written.

"FERC" means the Federal Energy Regulatory Commission, or any successor organization.

Deleted: "Equivalent Availability Factor" or "EAF" shall be determined in accordance with the formula set forth in PJM Manual 22: Generator Resource Performance Indices. [Unit-Contingent for Facilities Other Than Intermittent Renewable Energy Facilities] ¶

“FIN No. 46” has the meaning set forth in Section 5.1(e).

“Fitch” means Fitch Investors Service, Inc. or its successor.

“Force Majeure Event” shall mean any event or circumstance which wholly or partly prevents or delays performance of any obligations arising under this Agreement, but only if and to the extent such event or circumstance is beyond the reasonable control of, and not the result of the fault or negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to: (1) acts of God, including but not limited to landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather related events; (2) fire or explosions; (3) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Initial Delivery Date; (4) sabotage, riot, acts of terrorism, war and acts of public enemy; or (5) restraint by court order or other Governmental Authority.

Force Majeure Events shall not include: (i) a failure of performance of any Third Party, including any party providing electric transmission service or natural gas or other Fuel transportation, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure Event as defined above; (ii) economic hardship; (iii) lack of need for, or the availability of more favorable terms for the purchase or sale of, any Product during the Services Term; (iv) failure to timely apply for or obtain Permits; or (v) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure Event as defined above).

“Forced Outage” means any unplanned reduction or suspension of the electrical output from a Unit or unavailability of a Product in whole or in part from a Unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a Unit for operation, in whole or in part, for maintenance or repair that is not a Scheduled Maintenance Outage and not the result of a Force Majeure Event; provided that a PJM Maintenance Outage that is not also a Scheduled Maintenance Outage shall be a Forced Outage.

[“Fuel” means Gas, coal and any other fuel used in connection with the operation of the Project, including fuel used to generate Energy and for consumption by the auxiliary equipment used in the operation of the Project.][If applicable]

[“Fuel Interconnection Facilities” means the Fuel interconnection facilities required to safely and reliably deliver Fuel in volumes and at pressures sufficient to permit the Unit(s) to operate at the Guaranteed Capacity.] [If applicable]

“GAAP” means generally accepted accounting principles in the United States of America in effect from time to time.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.

["Gas" means natural gas, which will be any mixture of hydrocarbons or of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.][If applicable]

"Good Utility Practices" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"Guaranteed Capacity" means the highest Contract Capacity specified by Seller for any month during the Services Term.

"Guaranteed Initial Delivery Date" means [] months after the Effective Date.

"Hazardous Substance" means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a "hazardous" or "toxic" substance or waste, or as a "contaminant" or "pollutant" or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls ("PCBs"), and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

"Indemnifiable Loss" means any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands (by any Person, including any Governmental Authority), assessments, judgments, settlements and compromises.

"Indemnatee" has the meaning set forth in Section 11.1(c).

"Indemnitor" has the meaning set forth in Section 11.1(c).

"Initial Capacity Test" is a test of the Unit(s)' capability to deliver Energy conducted prior to the Initial Delivery Date in accordance with the Test Procedures.

"Initial Delivery Date" means the date on or after the Effective Date on which the Seller's obligation to deliver the Products commences, and compensation for such Products payable by Buyer to Seller, begins to accrue.

"Instructed Operations" means (i) an Operational Order, (ii) a mandatory direction of PJM, or (iii) an action required pursuant to the PJM RAA to meet Emergencies and reliability needs including voltage support.

"Interconnection Agreement" shall mean the interconnection agreement to be entered into between Seller and [Buyer] for the interconnection of the Project to the Delivery Point.

"Interconnection Point" shall mean the PJM bus in the State of Delaware to which the Project is electrically connected, or the closest location thereto in the State of Delaware and monitored for Locational Marginal Price by PJM.

"Interest Rate" means the Prime Rate; provided, however, after the occurrence and during the continuation of an Event of Default by a Party, the Interest Rate applicable with respect to payments made by such Party shall be the Default Interest Rate, and provided further, that the Interest Rate shall never exceed the maximum rate permitted by applicable Law.

"ISO Conditions" means [59] degrees Fahrenheit and [60]% relative humidity.

"kWh" means one kilowatt of electric power over a period of one hour.

"kW" means kilowatt(s).

"Law" means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Contract Term; or any binding interpretation of the foregoing.

"Letter(s) of Credit" shall mean a letter of credit in the form of an irrevocable, transferable standby letter of credit from a Qualified Issuer, in form and substance satisfactory to Buyer.

"Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), or preference, priority or other security agreement of any kind or nature whatsoever, including, without limitation, any sale-leaseback arrangement, any conditional sale or other title retention agreement, and any financing lease having substantially the same effect as any of the foregoing.

"Load Serving Entity" means any entity (or the duly designated agent of such an entity), including a load aggregator or power marketer, (i) serving an end-user within the PJM Control Area, and (ii) that has been granted the authority or has an obligation pursuant to state or local Law, regulation or franchise to sell electric energy to end-users located within the PJM Control Area.

"Locational Marginal Price" means the hourly integrated market clearing marginal price for Energy at the location the Energy is delivered or received.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner.

"Marked to Market Value" or "MtM Value" is an amount as defined in Section 8.1(b) and calculated in accordance with Appendix 2.

"Maximum Delay Damages" shall have the meaning set forth in Section 5.4.

"Mechanical Completion" means, as to the Unit(s), when, except for minor items of work that would not affect the safety and/or performance or operation of the Unit(s) and the Project such as painting, landscaping and so forth: (a) all materials and equipment required to be installed by the EPC Contractor for the Unit(s) have been installed, calibrated, loop checked and checked for alignment, lubrication, rotation and hydrostatic and pneumatic pressure integrity; (b) all systems required to be installed by the EPC Contractor have been installed and tested at significant loads; (c) such systems have been flushed and cleaned out as necessary; (d) all such equipment and systems have been fully operated in a safe and prudent manner at nominal ratings and have been installed in a manner that does not (i) void any subcontractor or vendor equipment, system or other warranties or (ii) violate any Permits; and (e) all systems required to be installed by the EPC Contractor and necessary for power generation are ready to commence testing and commissioning, the distributed control system for the Project is operational and the continuous emissions monitoring system has been installed.

"Milestone" shall mean any or each of the milestones forth in Schedule 3 relating to the construction, development, testing and operation of the Unit(s) and the Project.

"Minimum Liquid Collateral" has the meaning set forth in Section 8.1(b).

"MMBtu" means one million British Thermal Units.

"Monthly Construction Progress Report" means the report similar in form and content attached hereto as Appendix 3.

"Monthly Contract Capacity" or "MCC" means for the Unit(s) the lesser of Contract Capacity and the summer Net Capability rating of the Project in a specific calendar month during the Services Term, as determined by PJM.

"Monthly Fixed Payment" or "MFP" has the meaning set forth in Section 4.2(b).

"Monthly Payment Date" has the meaning set forth in Section 6.2.

"Moody's" means Moody's Investor Services, Inc., or its successor.

"Must-Run Generation" means generation designated by PJM to operate at a specific level and not available for dispatch.

"MW" means megawatts.

"MWh" means megawatt hour.

"NERC" means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.

"Net Capability" means, as of any time, the number of megawatts of Energy which can be delivered by the Unit(s), as determined under conditions and criteria specified in the PJM

Manual for Rules and Procedures For Determination of Generating Capability (Manual M-21), as amended from time to time.

"Non-Defaulting Party" has the meaning set forth in Section 12.2.

"Notice" means a written communication which is delivered in the manner required by Section 14.1, as applicable to that communication.

"Notice of Claim" has the meaning set forth in Section 11.1(c).

"Operating Procedures" has the meaning set forth in Section 3.13.

"Operational Limitations" of a Unit are the parameters set forth in Appendix 1, describing the physical capabilities of the Unit, including the time required for start-up, the limitation on the number of scheduled start-ups per Contract Year and the minimum operating limits for the Unit(s).

"Operational Order" means a mandate issued by a Governmental Authority or PJM that the Seller has no discretion to ignore or avoid to offer or provide a Product or to Start-Up, Shut-Down, curtail or operate a Unit. An Operational Order would include, for example, a mandate issued by the U.S. Secretary of Energy to offer Capacity or Energy or to operate a Unit during an Emergency. In contrast, by way of further example, a legal obligation to test a Unit for the purpose of maintaining its Permits is not considered an Operational Order.

"Outage" means the partial or full unavailability or inability of a Unit to operate at 100% of its Contract Capacity due to a Forced Outage, Scheduled Maintenance Outage or Force Majeure Event, including any derating or inability to produce a Product (other than as disclosed in Appendix 1 as an Operational Limitation).

"Outage/Availability Notification Form" means the notice form attached to Appendix 4.

"Participating Transmission Owner" means an entity that (i) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities, and (ii) has transferred to the PJM operational control of such facilities and/or entitlements to be made part of the PJM Grid.

"Party" or "Parties" has the meaning set forth in the first paragraph of the Agreement.

"Party's Event of Default" has the meaning set forth in Section 12.1(b).

"Permit" means any permit, authorization, license, order, consent, waiver, exception, exemption, variance, or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with any Governmental Authority, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Unit(s) and the Project under any applicable environmental or other Law.

Deleted: "Permitting Deadline" has the meaning set forth in Section 5.2(c). ¶
"Permitting Milestone" has the meaning set forth in Section 5.2(c).

"Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

"PJM" means PJM Interconnection, LLC, or any successor organization thereto.

"PJM Agreements" means the PJM Tariff, PJM Operating Agreement, PJM RAA, PJM Manuals and any other applicable PJM bylaws, procedures, manuals or documents, or any successor, superseding or amended versions thereof that may take effect from time to time.

"PJM Control Area" means the control area recognized by NERC as the PJM Control Area.

"PJM Grid" means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under PJM's operational control.

"PJM Interchange Energy Market" means the regional competitive market administered by PJM for the purchase and sale of spot electric energy at wholesale in interstate commerce and related services in the PJM Operating Agreement.

"PJM Maintenance Outage" means a "Generator Planned Outage" as defined in the PJM RAA. A PJM Maintenance Outage that also meets the requirements of a Scheduled Maintenance Outage shall be deemed to be Scheduled Maintenance Outage, but shall otherwise be a Forced Outage.

"PJM Manual" or "PJM Manuals" means the instructions, rules, procedures and guidelines established by PJM for the operation, planning, and accounting requirements of the PJM Control Area and PJM Interchange Energy Market.

"PJM Member" means any entity satisfying the requirements of PJM to conduct business with PJM, including transmission owners, generating entities, load serving entities and marketers.

"PJM Operating Agreement" means the Operating Agreement of PJM or its successor, including superseding or amended versions of such operating agreement that may take effect from time to time.

"PJM RAA" means the Reliability Assurance Agreement, dated as June 2, 1997, as revised or amended, by and among Buyer and the other parties signatory thereto.

"PJM Tariff" means the PJM Open Access Transmission Tariff providing transmission service within the PJM Control Area, as in effect from time to time, including any schedules, appendices or exhibits attached thereto.

"Prime Rate" means the rate of interest published by the Wall Street Journal as the prime lending rate or "prime rate", with adjustments in that varying rate to be made on the same day as any change in that rate is so published.

"Product" shall mean, collectively, Energy, Capacity, Ancillary Services, and Environmental Attributes.

"Project" means the electric generation facility described in Appendix 1, consisting of one or more Units committed to Buyer and the Site, Electrical Interconnection Facilities, the Fuel Interconnection Facilities and any other ancillary facilities, goods, equipment and real property associated with the Unit(s), and any and all other units (whether complete or under construction) which are owned, operated or controlled by Seller or any Affiliate of Seller and are located on the same Site or adjacent sites and/or use the same Electrical Interconnection Facilities and/or Fuel Interconnection Facilities; provided that for purposes of Section 3.1(d), a "Project" shall further include any electrical generating facilities that are deemed by any Governmental Authority to be part of the same facility or at the same location as the Unit(s) or that are directly or indirectly affected by the Project at which the Unit(s) are located.

"Project Permitted Liens" shall mean the Liens, encumbrances or security interests in the Project set forth on Schedule 4.

"Project Security Agreement" has the meaning set forth in Section 8.3 hereto.

"Qualified Issuer" means a U.S. commercial bank (or a foreign bank with a U.S. branch acceptable to Buyer) having total assets of at least \$10 billion and a senior unsecured long-term Credit Rating (unenhanced by third-party support) equivalent to A- or better as determined by S&P and the equivalent by Moody's or Fitch.

"Rating Agency" or "Rating Agencies" shall mean, individually or collectively, S&P, Moody's and Fitch.

"Recording" has the meaning set forth in Section 14.6.

"Regulatory Approval" shall consist of a final order of the Commission approving the terms of the Agreement without modification (including authorization by the Commission for Buyer to recover its costs incurred under the Agreement through its rates) and approval of the Agreement by each of the Agencies and other Governmental Authorities claiming jurisdiction over the Agreement.

"Regulatory Charges" has the meaning set forth in Section 9.2.

"Regulatory Charges Payment" has the meaning set forth in Section 9.2.

"Regulatory Disclosures" has the meaning set forth in Section 14.8.

"Renewable Energy Credits" or "RECs," shall have the meaning set forth in the Commission's Rules and Procedures to Implement the Renewable Energy Portfolio Standard.

"Renewable Energy Credits Rate" or "RR" has the meaning set forth in Section 4.2(a)(iii).

"Resource Adequacy Requirement" or "RAR" means a standard established and administered by the Commission and/or PJM or a successor control area operator, whereby unit-specific Capacity is identified and the physical unit is made available to PJM for dispatch; the eligibility to count Capacity toward the Resource Adequacy Requirement may be determined by identifying the full resource adequacy capability of specific Unit(s) or an amount of resource

adequacy capability from partial or a combination of Unit(s).

“S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc., or its successor.

“Scheduled Availability Notices” has the meaning set forth in Section 3.5(b)(i).

“Scheduled Energy” means Energy generated in response to Scheduled Operations and delivered to Buyer at the Delivery Point for its account.

“Scheduled Maintenance” means removing the equipment, or any portion thereof, from service availability, in whole or in part, for inspection and/or general overhaul of one or more major equipment groups of the type that is (i) necessary to reliably maintain the Unit(s), (ii) cannot be reasonably conducted during Unit(s) operations, (iii) causes the available Capacity to be reduced to less than 100% of the Contract Capacity (as applicable for such month) and (iv) has been scheduled and Noticed in accordance with the requirements of Section 3.10.

“Scheduled Maintenance Outage” is the period in which Scheduled Maintenance is performed provided that only a period which has been Noticed and is otherwise in accordance with Section 3.10 shall be considered a Scheduled Maintenance Outage. A Scheduled Maintenance Outage may be a PJM Maintenance Outage, but not all PJM Maintenance Outages shall be deemed to be Scheduled Maintenance Outages. A PJM Maintenance Outage that is not also a Scheduled Maintenance Outage shall be a Forced Outage.

“Scheduled Operations” means operation of a Unit as required to satisfy Buyer’s Schedule or Instructed Operations.

“Scheduled Shut-Down” means a Shut-Down required by Scheduled Operations. Cessation of operations due to Outages or an action of Seller that is not required for Scheduled Operations is not a Scheduled Shut-Down.

“Seller” shall mean [], a [].

“Seller Credit Limit” shall have the meaning set forth in Section 8.1(b).

“Seller Guarantor” shall mean an Affiliate of Seller entering into an Affiliate Guarantee, which Affiliate shall be satisfactory to Buyer.

Deleted: “Seller’s Deviation” shall have the meaning set forth in Section 3.5(d). ¶

“Seller Group” has the meaning set forth in Section 11.1(b).

“Seller’s Event of Default” has the meaning set forth in Section 12.1(a).

“Services Term” has the meaning set forth in Section 2.1.

“Settlement Amount” has the meaning set forth in Section 12.2(d).

“Shut-Down” means the action of causing the Unit(s) to cease producing Energy and/or Ancillary Services.

“Site” means the real property on which the Project is located, as identified in Appendix 1.

“Start-Up” means the action of causing a Unit to begin producing Energy and/or Ancillary Services from a state of no or zero production.

“Summer Month” means the calendar months of June, July, August and September.

“Tangible Net Worth” or “TNW” means a Person’s total assets (exclusive of intangible assets), minus that entity’s total liabilities, each as would be reflected on a balance sheet prepared in accordance with GAAP, and as of the relevant date of determination most recently filed with the United States Securities and Exchange Commission.

“Target Equivalent Availability Factor” shall mean each of the target Equivalent Availability Factors set forth in Section 4.1(a), as applicable. **[Unit-Contingent for Facilities Other Than Renewable Energy Facilities]**

“Termination Fee” has the meaning set forth in Section 5.4.

“Termination Payment” has the meaning used in Section 12.2.

“Test Procedures” has the meaning set forth in Section 3.12(b)(v).

“Tested Capacity” has the meaning set forth in Section in 3.12(b)(iii).

“Third Party” means a Person that is not a member of the Buyer Group or the Seller Group.

“Third Party Claim” means a claim, suit or similar demand by a Third Party.

Deleted: “Third Party Payments” has the meaning set forth in Section 3.1(c).

“Transmission Upgrades” are any additions and/or reinforcements to an electric transmission system that are required as a result of the interconnection of the Unit(s) to that transmission system or an interconnected transmission system and/or to permit delivery of the Products into the electric transmission system at the Delivery Point safely and reliably, in the quantities and at the times at which delivery of such Products may be required under this Agreement, up to and including quantities that can be produced utilizing all of the Contract Capacity, including upgrades to the network at points beyond the Interconnection Point.

“Unforced Capacity” or “UCAP” has the meaning set forth in the PJM RAA.

“Unit” means a generation unit described in Appendix 1 from which Seller has agreed to provide Products to Buyer pursuant to this Agreement.

“United States Bankruptcy Code” means title 11 of the United States Code.

“Winter Months” means the calendar months of December, January and February.

1.2 Interpretation. Unless otherwise required by the context in which any term appears:
(a) capitalized terms used in this Agreement shall have the meanings specified in Section 1.1; (b)

the singular shall include the plural and vice versa; (c) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits hereof, unless otherwise specified; (d) all references to a particular Person in any capacity shall be deemed to refer also to such Person's successors and permitted assigns in such capacity; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and shall not be construed to mean that the examples given are an exclusive list of the topics covered; (g) all accounting terms not specifically defined herein shall be construed in accordance with GAAP; (h) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (i) references to any agreement, document or instrument shall be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced as of such time; (j) the masculine shall include the feminine and neuter and vice versa; (k) references to a Law shall mean a reference to such Law as the same may be amended, modified, supplemented or restated and be in effect from time to time; (l) the term "month" shall mean a calendar month unless otherwise indicated, and a "day" shall be a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a "day" may be 23 or 25 hours on those days on which daylight savings time begins or ends; (m) words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings; and (n) all references to dollars are to U.S. dollars.

ARTICLE II

TERM

2.1 Term. The "Contract Term" will commence upon the Execution Date and, unless earlier terminated pursuant to this Article II, Article XII (Events of Default; Remedies), Article V (Conditions Precedent; Effective Date; Construction; and Initial Delivery Date), or any other provision hereof, will continue throughout the Services Term and until the date as of which all payment obligations arising under this Agreement, including any compensation for the Products, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly such as through set-off or netting) and the Collateral is released and/or returned as applicable. The Initial Delivery Date will occur, on or after the Effective Date, upon satisfaction of the conditions precedent set forth in Section 5.3. The "Services Term" is the period during which Seller is obligated to provide Products to Buyer commencing on the Initial Delivery Date and continuing for a period of [] years from the Initial Delivery Date unless earlier terminated pursuant to the terms of the Agreement.

2.2 Binding Nature. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under Section 5.1 (Conditions Precedent to Effective Date). Upon occurrence of the Effective Date, this Agreement shall be in full force and effect, enforceable and binding in all respects.

2.3 Failure of Timely Approvals. In the event that a final order of the Commission approving the terms of the Agreement without modification (including authorization by the Commission for Buyer to recover its costs reasonably incurred under the Agreement through its rates) and approval of the Agreement by each of the Agencies and other Governmental Authorities claiming jurisdiction over the Agreement do not occur within sixty (60) days of the Execution Date, either Party shall have the right to terminate this Agreement, without liability of one Party to the other, provided that such right is exercised by Notice received within thirty (30) days after such sixty (60) day deadline. If either Party terminates this Agreement in accordance with the above provisions of this Section 2.3, Buyer shall refund to Seller the full amount of the Development Period Security posted by Seller within ten (10) Business Days of such termination.

ARTICLE III
OBLIGATIONS AND DELIVERIES

3.1 Transaction.

(a) Purchase and Sale Obligation. During the Services Term, Seller shall sell and make available to Buyer on a firm basis and Buyer shall accept and pay in accordance with Section 4.2 and Article VI for 100% of the Monthly Contract Capacity and 100% of the net revenues Seller receives from the sale of Ancillary Services of each Unit and Seller shall sell and make available to Buyer on a firm basis, a quantity of Energy, as scheduled by Buyer. Seller shall deliver the Energy to Buyer at Red Lion 230 kV (DPL Bus 23020). The Energy may be produced at the Unit or at any other location determined by Seller in its sole discretion. The quantity of Energy sold by Seller to Buyer and purchased by Buyer from Seller shall be equal to the quantity of Energy that would have been produced by the Unit if the Unit had been operated in accordance with Buyer's scheduling directives. Buyer may schedule deliveries of Energy based upon operation of the Unit in Base Mode or Peak Mode and Buyer may schedule deliveries of Energy on either a day-ahead basis or on a real-time basis. Buyer's scheduling must be consistent with the operating parameters of the of the Unit. Seller shall seek FERC approval for the rates at which it sells the Ancillary Services from the Unit. With respect to any Ancillary Services created after the Execution Date, at the request of Buyer, Seller shall be required to provide Buyer (a) the revenues received from the sale of such Ancillary Service to the extent the Ancillary Service can be provided by the Unit(s) without any material increase in Seller's operating or capital costs or decrease in Seller's revenues, or (b) if Buyer agrees to compensate Seller for the incremental costs or reduced revenues Buyer would not have incurred but for the provision of such Ancillary Services to the extent such Ancillary Services can only be provided by the Unit(s) with material costs and/or reduced revenues for Seller. Renewable Energy Credits included in the Products that may be purchased by Buyer pursuant to this Section 3.1(a) shall be subject to the maximum quantity limitations set forth on Schedule 5 hereto.

(b) Control. Seller shall at all times retain operational control of the Unit(s), be responsible for all operation and maintenance of the Units(s) and will bear all costs related to ownership, operation and maintenance of the Unit(s). As between the Parties, Seller shall have the sole right and discretion to determine the availability of the Unit(s) for operation.

(c) Exclusivity; Rights to Output and Payments. Seller shall not enter into any agreement with any other Person which impairs Seller's ability to provide the Monthly Contract Capacity to Buyer from the Unit.

(d) Unit Modifications. Seller shall have the right to increase the Capacity of the Project or to expand or change the configuration of the Project during the Services Term, and to sell such increased Capacity and associated Ancillary Services to third parties; provided, however, Seller shall give Buyer reasonable advance written notice of any such changes, and shall not (nor permit any other Person to), without the prior written consent of Buyer, increase, modify or decrease the Capacity of any Unit that is committed to Buyer; nor take any other action that would, or may reasonably be expected to, (i) increase the costs to Buyer under the Agreement, (ii) impair or limit the ability of the Unit to supply the Contract Capacity to the Buyer, (iii)

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Deleted: Seller will not commit less than [an entire Unit] to Buyer, nor sell [any] Product associated with a Unit to any Person other than Buyer (other than pursuant to an Instructed Operation as set forth in Section 3.5). Seller may not enter into [any] agreement or arrangement under which Product associated with Contract Capacity may be claimed by any Person other than Buyer for purpose of satisfying such Person's obligations to PJM or any other independent system operator having jurisdiction over such Person or the Unit(s). For the avoidance of doubt, Seller shall not cause the Unit to become subject to a Must-Run Generation agreement or any other obligation to deliver a Product to any other Person other than pursuant to an Instructed Operation, and Buyer shall have the exclusive right to enter into a Must-Run Generation agreement with respect to any Unit and/or resell any Product from any Unit, provided in each case that the Must-Run Generation agreement or resale would not result in a violation of the Operational Limitations of the affected Unit. Subject to the reporting requirements of Section 3.5, nothing herein shall bar Seller from complying with Instructed Operations; provided that if Seller receives an Instructed Operation other than through Buyer, Seller shall promptly report such event in accordance with Section 3.5(b). Seller acknowledges and agrees that Buyer may take whatever measures it elects to protest, challenge, eliminate, institute or modify any Instructed Operation, which may if [...]
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impair the ability of the Buyer to purchase or receive the Contract Capacity from such Unit, (iv) impair the rights of the Buyer to full and exclusive rights to the Contract Capacity of the Unit, or (v) reduce the ability of Seller to deliver the Contract Capacity of the Unit. Buyer's consent pursuant to this paragraph must be in writing and Buyer may delay its consent until it determines whether, or withhold its consent if it determines that, the proposed change would impair or limit the ability of the Seller to supply and deliver Contract Capacity from the Unit(s) to the Buyer, the ability of the Buyer to purchase or receive the Contract Capacity from such Unit(s), or Buyer's full and exclusive rights to the Contract Capacity or otherwise adversely affect Buyer's interests in the Unit(s).

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3.2 Interconnection Facilities. [Non-Negotiable Term]

(a) Construction. In accordance with Article V, the Seller shall have the obligation to construct and upgrade the Electrical Interconnection Facilities, including metering and submetering facilities, and Transmission Upgrades, and cause them to become operational.

(b) Maintenance of Electrical Interconnection Facilities. To the extent required to achieve the Initial Delivery Date and at all times during the Services Term, Seller shall maintain and/or cause to be maintained, at its expense, the Electrical Interconnection Facilities such that the Electrical Interconnection Facilities are capable of delivering the Products that can be generated or produced using the Guaranteed Contract Capacity in accordance with the terms of this Agreement to and at the Delivery Point during each month as applicable in accordance with the terms of this Agreement.

Deleted: (in addition to such other output of the Project as the Electrical Interconnection Facilities are required to transmit)

3.3 Fuel Supply, Transportation and Interconnection. [Non-Negotiable Term]

(a) Fuel Supply and Transportation. Seller shall be responsible for all contracts, arrangements for and costs of Fuel supply and delivery to the Project and the Unit(s), including all ancillary services related thereto such as balancing and storage of Gas, if applicable, as required for Seller to fulfill its obligations under the Agreement during the Services Term. [Note: The preceding is without prejudice to such pricing proposals as Seller wishes to offer, which may tie the price of Energy to fuel costs.]

(b) Gas Interconnection. [For Gas-Fired Projects] Seller shall be responsible for all costs related to upgrades to transmission facilities and construction of interconnection facilities required to interconnect the Unit(s) to enable delivery of Gas to the Unit(s) consistent with all standards and provisions set forth by FERC or any other Governmental Authority.

3.4 Electric Transmission and Delivery. [Non-Negotiable Term]

(a) Title and Risk of Loss. Title to and risk of loss related to each Product shall transfer from Seller to Buyer at the Delivery Point.

(b) Seller's Responsibility. During the Services Term, Seller shall arrange, schedule and be responsible for electric transmission service and any and all costs or charges imposed on or associated with the Products or its delivery of the Products, including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with any transmission outages or curtailment up to and at the Delivery Point, consistent with all standards and provisions set forth by FERC, PJM or any other applicable governing agency or tariff. Seller shall be responsible for paying the costs of any transmission system upgrade(s) required by PJM necessary for the performance of the obligations set forth in the Agreement.

Regardless of whether Buyer is the interconnecting transmission owner, Seller shall be responsible for Seller's interconnection arrangements or costs.

(c) Buyer's Responsibility. During the Services Term, Buyer shall arrange, schedule and be responsible for electric transmission service and any and all costs or charges imposed on or associated with the Product(s) or its receipt of the Products, including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with any transmission outages or curtailment, from and after the Delivery Point.

3.5 Scheduling and Balancing.

(a) Scheduling. During the Services Term, Seller will schedule the Unit(s) with PJM's Office of Interconnection.

(b) Buyer's Dispatch Rights. During the Services Term, Buyer shall have the exclusive right to schedule the delivery of Energy. During the Services Term Seller shall have the exclusive right to schedule the operation of the Unit.

or

3.6 Standards of Care.

(a) General Operations. Seller, as Owner and Operator of the Project, shall be responsible for complying with all applicable requirements of Law, the Commission, PJM, NERC and other Governmental Authorities relating to the Project and the Unit(s) (including those related to construction, ownership and/or operation of the Project and the Units(s)), whether imposed pursuant to existing Law or pursuant to changes enacted or implemented during the Contract Term, including all risks of environmental matters relating to the Project and the Unit(s) subject to Section 9.2 with respect to Btu or carbon taxes imposed in the future. For the avoidance of doubt, Seller will be responsible for procuring, at its expense, all Permits, emissions credits, offsets and allowances required for operation of the Project and the Unit(s) in compliance with Law.

(b) PJM Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of PJM and the applicable pipeline or local distribution company [if applicable], (ii) PJM scheduling practices and (iii) Good Utility Practices.

(c) Reliability Standard. Seller agrees to abide by all NERC, PJM and Commission reliability requirements.

3.7 Meter Maintenance and Operation. All electric metering equipment, whether owned by Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Good Utility Practices.

3.8 Metering.

(a) Meter Installation and Testing. In accordance with applicable PJM procedures and requirements, Seller shall provide, install, maintain, operate and replace (as needed) appropriate electric meters and back-up meters at the Seller's side of the Delivery Point at its sole cost and expense to accurately determine Energy and the quantities of Products delivered under this Agreement. The meters will be sealed by both Parties, which seals will only be

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Deleted: any or all Unit(s) for the delivery of any of the Products at any time, including on a day-ahead, hour-ahead and real-time basis within the defined Operational Limitations of the Unit(s)

Deleted: <#>(i) Seller's Scheduled Notices of Availability. Each day, between the hours of 12:01 a.m. and 5 a.m., commencing one week prior to the expected Initial Delivery Date and continuing thereafter throughout the Services Term, Seller shall provide Buyer a complete and accurate Notice of the expected availability and Capacity of each Unit (as reasonably determined at that time) for that day and each of the next thirteen (13) days, setting forth therein the percentage of the Contract Capacity of that Unit that is expected to be available for Scheduled Operations and a disclosure of the existence and expected duration of any Outage or any Instructed Operation, the amount of Capacity affected by such Outage and the nature and effect of any Instructed Operation on the Unit's availability, regardless of whether or the extent to which such Unit is then or may be scheduled for dispatch; provided that such information shall be provided only for days that are part of the Services Term. Additionally, each month, commencing one month prior to the expected Initial Delivery Date and continuing thereafter throughout the Services Term (at such time of month as agreed to by the Parties from time to time), Seller shall provide Buyer a complete and accurate Notice of the expected availability and Capacity of each Unit for the next calendar month (as reasonably determined at the time), setting forth therein the percentage of the Contract Capacity that is expected to be available for Scheduled Operations and a disclosure of the existence and expected duration of any Outages, and the a ... [2]

Deleted: scope and duration of the Instructed Operation. §
<#>(iii) Other Reporting Obligations. Each notice provided pursuant to Section 3.5(b)(i) and (b)(ii) that includes notice of an Outage or Instructed Operations shall include all such information concerning such Outage, change or limitation as PJM may require to be reported by Buyer or by Seller. Each such notice from Seller to Buyer shall be made by providing Notice in accordance with the Outage/Availability Notification ... [3]

Deleted: and all of Buyer's applicable requirements regarding interconnection and operation of the Unit(s) as set forth in Schedule 7, as such schedule is updated from time to time by Buyer

broken by both Parties for inspection, testing or adjustment. The electric meters shall meet all specifications of PJM and shall be checked annually by Seller, who shall provide Buyer with not less than thirty (30) days prior written Notice of such tests. Buyer will have the right to have a representative(s) present during such tests. Seller shall exercise reasonable care in the maintenance and operation of such metering equipment so as to assure to the maximum extent practicable an accurate determination of such quantities of Energy and Products. Seller shall establish in consultation with Buyer a system allowing Buyer and Seller to provide real-time dynamic signals sufficient to fulfill the scheduling parameters set forth in Schedule 6 hereto, including enabling Seller or its agent to provide real-time dynamic signals to Buyer regarding the types and amounts of Product that are to be made available to Buyer pursuant to this Agreement and enabling Seller to provide Buyer or its agent real-time dynamic signals specifying the amounts of Energy and other Products that are being delivered to the Delivery Point at all times. The amount of Energy and Products measured by the metering equipment as being delivered to the Delivery Point rounded downward to the nearest MWh shall be the basis for determining the amount of Product delivered pursuant to this Agreement, subject to Buyer's testing and audit rights.

(b) Meter Retesting and Inaccuracy. Either Party may from time to time request a retest of the meters if it reasonably believes that the meters are not accurate within the tolerance limits established by PJM or [the applicable service provider]. The requesting Party shall pay for any such retest and shall provide the other Party with not less than fourteen (14) days prior written Notice of such retest. Such other Party will have the right to have a representative present during such retest. If any tested or retested meter is found to be not accurate within the tolerance limits established by PJM, Seller shall promptly arrange for the correction or replacement of the meter, at its expense, and the Parties shall use the measurements from the back-up meters or submeters to determine the amount of the inaccuracy. If the back-up meters or submeters are found to be not accurate within the tolerance limits and the Parties cannot otherwise agree as to the amount of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the earlier of (a) one-half of the period from such discovery to the date of the last testing or retesting of the meters or (b) one hundred eighty (180) days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the tolerance limits will be invoiced by such Party within fifteen (15) days of the discovery of such inaccuracy, with payment due within thirty (30) days after the date of the invoice for such amounts.

(c) Access to Meters. To support invoice settlement purposes, Seller shall provide Buyer with access pursuant to Section 3.11(b) to all real-time meters, billing meters and back-up meters (i.e., all metering). Seller shall authorize Buyer to view the Unit(s)' on-line meter data.

3.9 Replacement Power. On and after the Initial Delivery Date, Seller shall be permitted to meet its obligation to deliver Energy pursuant to the terms of the Agreement by arranging for delivery of Energy to the Delmarva Zone which such Energy may be either produced by the Unit or produced at any other source selected by Seller.

3.10 [Reserved] 3.11 [Reserved]

3.12 Capacity Testing.

Deleted: , in the event any Product required to be delivered to Buyer hereunder shall not be available to Seller for delivery to Buyer, Seller shall be required to procure and substitute such Product from a source other than the Unit(s) designated by Buyer for sale or delivery to Buyer under this Agreement. If

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Deleted: to Buyer of substitute Products meeting the requirements of the Agreement at the times required under the Agreement, Seller shall promptly Notify Buyer of its inability to deliver Products within three (3) Business Days prior to the date of such delivery, and shall pay to Buyer all of Buyer's costs of obtaining such Product from Third Parties to the extent the same exceed the price Buyer would have paid for such Product under this Agreement (i.e., cost of cover). All costs incurred by Buyer pursuant to the previous sentence shall be invoiced to Seller by Buyer and paid to Buyer by Seller pursuant to payment provisions set forth in Article VI. **[Firm Power only]**

Deleted: Scheduled Maintenance Outages and PJM Maintenance Outages. <#>(a) Seller's Scheduled Maintenance Outage and PJM Maintenance Outage Proposed Schedule. Seller shall notify Buyer of its proposed Scheduled Maintenance Outages for the Unit(s) by submitting to Buyer a completed Outage/Availability Notification Form (see Appendix 4) that fully accords with the requirements of Section 3.10(b) as follows: ¶
<#>(i) for the next calendar year, by no later than September 1 of each year during the Services Term; and ¶
<#>(ii) for each quarter, updating to the extent required the annual schedule previously Noticed, by no later than thirty (30) days prior to the commencement of each quarter; provided that Scheduled Maintenance lasting longer than five consecutive days may be taken only after a minimum of fifty (50) Business Days advance Notice prior to the month in which the Scheduled Maintenance will occur; Scheduled Maintenance las[... [4]

Deleted: Operations Logs and Access Rights. ¶
<#>(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations of the Unit(s) and the Project on a daily basis. Such log shall include, but not be limited to, information on power production, ... [5]

(a) Initial Testing Requirement. Within 30 days prior to the Initial Delivery Date, Seller shall conduct an Initial Capacity Test for purposes of establishing the Commercial Operation Date.

(b) Initial Capacity Test Procedure. The Initial Capacity Test shall be conducted in accordance with the following procedures ("Test Procedures"):

(i) The Initial Capacity Test shall consist of three (3) one-hour test periods. For each one-hour test period, the data will be averaged and corrected back to ISO Conditions. The Capacity of the Unit(s) will be the arithmetic average of the three corrected test results.

(ii) The Energy output of the Unit(s) during the Initial Capacity Test shall be measured by the PJM revenue meter at the Delivery Point and the submeter for the Unit being tested.

(iii) The Capacity of a Unit as demonstrated by the Initial Capacity Test ("Tested Capacity") shall be the metered Energy output of such Unit per hour (measured in megawatts), adjusted to ISO Conditions, by using standard and accepted engineering methods. The determination of the Tested Capacity shall be done by Seller. The Initial Capacity Test results shall be delivered to Buyer no later than forty-eight (48) hours after the completion of the Initial Capacity Test.

(iv) Buyer may have a representative present at the Project at any time during the Initial Capacity Test.

(v) The Parties shall provide for additional procedures and protocols related to Capacity testing, consistent with the principles set forth above, in the Operating Procedures, which shall be additional "Test Procedures."

(c) Cost Responsibility.

(i) Seller shall bear all costs of the Initial Capacity Test.

(ii) Buyer shall accept and pay for all Energy produced during such testing at the then-prevailing rate under the Locational Marginal Price, as determined by PJM.

(d) Disputes. If Buyer disputes the establishment of the Tested Capacity, as determined by Seller pursuant to this Section 3.12, in any respect, including the adjustment of the metered results to establish the Tested Capacity, the dispute shall be resolved in accordance with Article XIII (Dispute Resolution). Pending such resolution, the Tested Capacity shall be calculated according to the procedures set forth in this Section 3.12, provided that in the event that the dispute is resolved such that any invoices under the Agreement shall be adjusted retroactively, Seller or Buyer, as applicable, shall refund the excess payments or pay the deficiency to the other Party, with interest calculated at the Interest Rate, retroactive to the date on which the correct amount should have been due.

Deleted: Operating Procedures. [Non-Negotiable Term] Prior to the Initial Delivery Date, the Parties shall mutually develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein including, but not be limited to, (1) procedures for scheduling and dispatch, (2) methods of day-to-day communications, (3) key personnel lists, (4) record keeping and (5) such other procedures and protocols as the Parties deem appropriate for implementation of this Agreement (the "Operating Procedures"); provided that failure to agree on such procedures (i) shall be resolved in accordance with the procedures set forth in Article XIII (Dispute Resolution) and (ii) shall not relieve either of the Parties of its obligations under this Agreement. ¶

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3.13 [Reserved] 3.1 Resource Adequacy Requirements. During the Services Term, Seller

shall commit the Unit(s) to Buyer for purposes of meeting its obligation to provide Contract Capacity. To the extent that Seller's obligation to provide Contract Capacity infers an obligation to meet any Resource Adequacy Requirements ("RAR") applicable to Buyer that may be established by the Commission or PJM (or a successor control area operator) from time to time, Seller shall comply with any Commission, PJM or FERC requirements for meeting RAR. For avoidance of doubt, Buyer is entitled to all rights and entitlements that are related to RAR, including capacity tags, capacity credits, and all installed capacity and other Capacity-related Products pertaining to the Contract Capacity. Throughout the Services Term, Seller shall take all such actions and execute any and all documents or instruments necessary to ensure the availability and qualification of each Unit and its Contract Capacity to meet Buyer's RAR and Buyer's or PJM's right to the use of the Unit(s) for the benefit of Buyer's RAR. Notwithstanding the foregoing, in the event Seller is required to incur any increase in operating or capital costs, in excess of \$[] in order to meet Buyer's RAR, Buyer shall have the option to waive or enforce compliance with the obligations related to RAR hereunder, and shall, in the latter case, compensate Seller for the incremental costs it would not have incurred but for compliance with RAR in excess of \$[]. In the event the Parties disagree on the amount needed to keep the Seller in the same financial position as it would have been in had it not been required to incur any such costs of compliance with RAR, the matter shall be resolved in accordance with the dispute resolution provisions set forth in Article 13. Subject to the above terms of this Section 3.14, the actions required of Seller pursuant to this Section 3.14 may include the following:

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Deleted: Buyer's entitlement to the Products from the Unit(s)
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(i) Cooperating with Buyer, and cooperating with and encouraging the regional entity or Governmental Authority responsible for resource adequacy administration, to certify or qualify the Unit(s) and no less than all of the Contract Capacity, for RAR purposes; meeting requirements established by PJM in its resource adequacy counting protocols, including demonstration of the ability to deliver no less than the Contract Capacity over all hours required for full RAR eligibility, and demonstrating that no less than the Contract Capacity can be delivered to the PJM Grid pursuant to any deliverability standards established by PJM or other regional entity or entities responsible for RAR administration;

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(ii) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions rendered by the Commission or the regional entity or entities or Governmental Authority responsible for RAR administration, so as to maintain the benefits of the bargain struck by the Parties; and

(iii) Taking commercially reasonable measures necessary to comply with any Commission or PJM requirements for meeting RAR, including by way of example, making the Unit(s) available to PJM for dispatch; complying with all requirements associated with RAR that are imposed through either PJM market design and tariffs, the Commission or FERC, including, for example, requirements related to bidding and/or dispatch including those imposed for the day-ahead, hour-ahead and real-time markets; installing communication equipment, complying with communication protocols, making capital improvements and incurring operating expenses; and changing operations.

ARTICLE IV

AVAILABILITY AND COMPENSATION

4.1 [Reserved].

Product Compensation.

(a) Compensation Rates.

(i) Capacity Payment Rate ("CPR") shall equal \$ ____ per kW-year.
[Price to include Ancillary Services unless otherwise specified by bidder]

(ii) Energy Rate ("ER") shall equal \$ ____ per MWh.

(iii) [Renewable Energy Credits Rate ("RR") shall equal \$ ____ per MWh.]
[subject to maximum volume limitations pursuant to Section 3.1(a).]

(b) Product Payment Obligations.

During each month of the Services Term, Buyer shall pay Seller, in arrears, a Monthly Fixed Payment ("MFP") for each Unit, as full payment for the right to receive the Products and the delivery of the Capacity, Renewable Energy Credits and [all] other Products associated with the Unit, determined as follows:

$$MFP_m = [(CPR * 8.333\%) * MCC_m] * AA + [ER * MED] + [RR * MRD]$$

where,

MFP_m is the Monthly Fixed Payment for the subject month;

MCC_m for the subject month is the Monthly Contract Capacity for such month;

MED is the monthly Energy delivered to Buyer by Seller.

MRD is the monthly RECs delivered to Buyer by Seller.

Deleted: Availability. [Unit-Contingent Only] ¶
<#>(a) Target Equivalent Availability Factor. The "Target Equivalent Availability Factor" of each Unit is as follows: ¶
January - February: []% Equivalent Availability Factor ¶
March - May: []% Equivalent Availability Factor ¶
June - September: []% Equivalent Availability Factor ¶
October - November: []% Equivalent Availability Factor ¶
December []% Equivalent Availability Factor ¶
[Note: monthly target EAF numbers must be consistent with annualized Target EAF specified in Form D of Bidder Response Forms; June-September Target EAF must be at least 3% higher than annualized EAF and January-February Target EAF must be at least 2% higher than annualized EAF]

Deleted: (b) Calculation of Equivalent Availability Factor. Each month Seller shall calculate the Equivalent Availability Factor of each Unit, subject to audit by Buyer. Subject to Operating Procedures developed pursuant to Section 3.13, if Seller identifies a Unit as unavailable due to an Outage (e.g., including in a Scheduled Availability Notice or pursuant to an Outage/Availability Notification Form) for any hour, the Unit shall be deemed unavailable for that hour for purposes of the Equivalent Availability Factor calculation, provided that if Seller provides a revised notice indicating the Unit is available for an hour in which it was previously deemed unavailable due to an Outage at least thirty (30) minutes prior to the earlier of the time the Buyer is required to schedule or bid the Unit in PJM's day-ahead energy market, the Unit will not be deemed to be unavailable due to an Outage for such hour for purposes of determining the Equivalent Availability Factor; and if Seller provides a revised notice indicating the Unit is available for an hour in which it was previously deemed unavailable due to an Outage at least 30 minutes prior to the earlier of the time the Seller shall schedule or bid [6]

Deleted: AA (Availability Adjustment) shall be calculated as set forth on Appendix 5; ¶

Deleted: [Note: Availability Adjustment not used for intermittent renewable energy projects or offers to provide Firm Service. For wind energy projects and other intermittent renewable energy projects, Buyer will pay Seller for the amount of UCAP from Buyer's entitlement to Contract Capacity from the Project as determined by PJM from time to time.]

ARTICLE V

CONDITIONS PRECEDENT; EFFECTIVE DATE; CONSTRUCTION; AND INITIAL DELIVERY DATE

5.1 The Effective Date.

(a) Conditions Precedent to Effective Date. The Effective Date shall be deemed to have occurred on the satisfaction of the following conditions precedent:

(i) Buyer and Seller, as applicable, shall have entered into the Project Security Agreement (if, and as, agreed to by the Parties) and the other Ancillary Agreements.

(ii) Seller shall have provided to Buyer the initial installment, based on the amount of \$50/kW [\$20 for intermittent renewable energy projects] of the Guaranteed Capacity, of the Development Period Security pursuant to Section 8.1(a).

(iii) Buyer's independent outside auditing firm shall have determined that Buyer will not be required to consolidate Seller on Buyer's financial statements under the latest interpretations of the Financial Accounting Standard Board's Interpretation No. 46 ("FIN No. 46"), "Consolidation of Variable Interest Entities."

(iv) Regulatory Approval shall have occurred and either no timely appeal is filed and the Regulatory Approval shall be final and nonappealable or, in the event of a timely appeal of the Regulatory Approval, such approval is upheld on appeal and is no longer subject to appeal.

Not later than [] days after Regulatory Approval has been obtained, Buyer shall seek to obtain a determination from Buyer's independent outside auditing firm with respect to the condition precedent in subclause (iii) above and shall thereupon give Notice to Seller whether or not such condition has been satisfied. If, within sixty (60) days of Buyer's request for such determinations, Buyer's independent outside auditing firm makes neither the determination that Buyer will not be required to consolidate Seller as described above nor the determination that Buyer will be required to consolidate, the condition precedent in subclause (iii) above shall be deemed to have been satisfied; provided, however, that the deemed satisfaction of such condition precedent shall be without prejudice to Buyer's subsequent right to terminate under Section 12.4, and the provisions of Section 12.4 requiring the outside auditing firm's determination that consolidation is required be "due to Seller's actions or other changes in circumstance" shall not be applicable to the outside auditing firm's initial determination made after such sixty (60) day period. In the event Buyer's independent outside auditing firm determines in such sixty (60) day period that Buyer will be required to consolidate Seller on Buyer's financial statements, Seller shall have a thirty (30) day period in which to cure the event or circumstances identified by Buyer's independent outside auditing firm as triggering consolidation under FIN No. 46. In the event that Seller is unable to cure the event or circumstance under FIN No. 46 triggering consolidation, as determined by Buyer, Seller shall then have a thirty (30) day period to appeal to the Commission for expedited review of the measures, if any, available to Seller to avoid consolidation. In the event that Seller fails expeditiously to adopt measures determined by the Commission to avoid consolidation, or that no such measures are determined to be available, Buyer shall within sixty (60) days determine either to exercise its right of termination of this Agreement as set forth in Section 12.4 or to waive the satisfaction of the condition precedent in subclause (c), above, and any subsequent right to terminate Buyer might otherwise have under Section 12.4, except if a different and subsequent event or circumstance triggers consolidation or

FIN No. 46 is modified such that the same event or circumstance triggers consolidation.

(b) Failure of the Effective Date. In the event that a condition precedent to the Effective Date has failed to be satisfied, provided that a Party has made commercially reasonable efforts, based on the extent of its reasonable control, to satisfy the conditions precedent to the Effective Date set forth in Section 5.1(a), such Party shall have the right to terminate this Agreement, as long as such right is exercised by Notice received within thirty (30) days after such [] failure. If Seller has the right to terminate this Agreement in accordance with the above provisions of this Section 5.1(b), and this Agreement is terminated pursuant to this Section 5.1(b), Buyer shall refund to Seller the full amount of Development Period Security posted by Seller within ten (10) Business Days of such termination.

5.2 Construction.

(a) Design, Development and Construction. As between Buyer and Seller, Seller shall have sole responsibility for the design and construction of the Project and the Unit(s), Transmission Upgrades (if any) and all related metering and submetering facilities, including the obligation to perform all studies, including environmental studies, pay all fees, obtain all necessary Permits and execute all necessary agreements with PJM and the Participating Transmission Owner for the Electrical Interconnection Facilities, Transmission Upgrades and with the applicable counterparties for the Fuel Interconnection Facilities necessary for the ownership, construction, operation and maintenance of the Unit(s) and delivery of Seller's Products to Buyer. Such design, construction and upgrades shall be consistent with all standards and provisions set forth by FERC, PJM or any other applicable Governmental Authority and the interconnecting transmission owner. All Electrical Interconnection Facilities and Fuel Interconnection Facilities, including metering and submetering facilities and Transmission Upgrades must be of sufficient capacity to permit the Unit(s) to operate at all times during each month at the Guaranteed Capacity (in addition to such capacity as required for units located at the Project that are not committed to Buyer). Metering and submetering facilities must meet such additional specifications as set forth in Sections 3.7 and 3.8.

(b) Construction Scheduling. [Non-Negotiable Contract Term] At least three (3) months prior to issuance of the notice to proceed by Seller to the EPC Contractor, Seller shall provide Buyer a construction schedule detailing the schedule and construction milestones for completing the [Project][Unit(s)] and reaching the Commercial Operation Date. Seller shall provide monthly progress reports, including projected time to the Commercial Operation Date, and Buyer shall have the right, during business hours and upon reasonable notice, to inspect the construction site and monitor construction of the Project.

(c) Permitting. In the event that, after making commercially reasonable efforts, Seller fails (i) to secure Permits required for the construction or commencement of commercial operation of the Project or (ii) to obtain PJM permission to interconnect to the PJM grid within a time required to complete the Unit on a timely basis Seller shall, upon ten (10) days written notice to Buyer, be permitted to terminate the Agreement and Buyer shall, within ten (10) days of such termination return the entire Development Period Security to Seller. As used herein, receipt of PJM permission to interconnect to the PJM grid means that this Agreement shall be modified so that the prices paid by Buyer include the costs incurred by Seller for all required PJM system upgrades for such interconnection. (d) Critical Milestones. The Seller shall cause

Deleted: Seller shall be permitted to terminate the Agreement and Buyer will return the Development Period Security to Seller less \$50 per kW of Guaranteed Capacity [\$20 per kW for intermittent renewable energy projects] as liquidated damages if Seller, after making commercially reasonable efforts to do so, is unable to secure the Permits required for the construction and commencement of commercial operation of the Project, excepting such Permits for operation which are routinely granted on or about the time of the commencement of commercial operation (the "Permitting Milestone"), on or prior to [date] (the "Permitting Deadline"). In the event that after making all commercially reasonable efforts to do so, Seller cannot satisfy the Permitting Milestone prior to the Permitting Deadline, then, at Seller's election, Seller shall be permitted to extend the Permitting Deadline by six (6) months if Seller agrees, going forward, to pay the full amount of the Development Period Security to Buyer as liquidated damages if Seller is unable to obtain the necessary Permits to achieve the Permitting Milestone by the extended Permitting Deadline and Buyer exercises its right to terminate this Agreement. ¶

the development and construction of the Project to meet each of the Critical Milestones on or before the dates specified for such Critical Milestones or prior to the dates specified in Section 1.1, and shall provide Notice (including evidence reasonably requested by Buyer) when each Critical Milestone is accomplished. [Note: Critical Milestones to be determined based on ability to achieve Initial Delivery Date by the Guaranteed Initial Delivery Date.]

(e) Default. If Seller fails to complete any Critical Milestone within twelve (12) months of the date such event is scheduled to occur on or before and such failure is not caused by a Force Majeure Event, such failure will be deemed an Event of Default and Buyer may elect to exercise the remedies that are available upon such an Event of Default pursuant to Article XII, including termination of this Agreement after Notice.

(f) Reports. Within five (5) days after the close of each calendar month until the Initial Delivery Date, Seller shall provide to Buyer a Monthly Construction Progress Report addressing each of the Milestones (see Schedule 3) including projected time to completion, and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Buyer shall have the right, during business hours and upon reasonable notice, to inspect the Site and/or on-Site Seller data and information pertaining to the Unit(s) and otherwise inspect or audit to enforce its rights pursuant to this section.

5.3 Initial Delivery Date.

(a) Conditions Precedent. The Initial Delivery Date shall occur, on or after the Effective Date, upon the date on which each of the following conditions precedent have been satisfied or waived by written agreement of the Parties.

(i) Seller shall construct or cause to be constructed the Project at no expense to Buyer, which shall include the equipment and characteristics as described in Appendix 1, and which shall reasonably be expected to enable Seller to satisfy the obligations of the Seller herein.

(ii) Seller shall construct or cause to be constructed the Electrical Interconnection Facilities at no expense to Buyer such that the Electrical Interconnection Facilities are capable of delivering the Guaranteed Capacity to and at the Delivery Point during each month (in addition to any other output of the Project as the Electric Interconnection Facilities are required to transmit) and shall cause them to be placed into service, in each case, in accordance with the requirements of the interconnecting transmission owner and/or operator, and applicable rules, if any, of FERC, PJM, the Commission and any other organization or Governmental Authority charged with reliability responsibilities.

(iii) At Seller's expense, Seller shall cause any and all Transmission Upgrades required to enable the grid to accept delivery of the full Contract Capacity for all Units (in addition to any other output of the Project) at all times during each month, to be constructed and placed into service, including, to the extent necessary, by funding the Transmission Upgrades.

(iv) At Seller's expense, Seller shall secure all Permits required for the lawful operation and maintenance of the Project and the Unit(s), inclusive of the Electrical Interconnection Facilities, including all those related to environmental matters, as necessary to permit the Unit(s) to operate at Guaranteed Capacity and for Seller to perform its obligations under the Agreement; and demonstrate that it possesses all emissions allowances, credits and offsets necessary for such operation of the Unit(s) at the Guaranteed Capacity for a period of at least one year.

(v) Seller shall have executed all interconnection, transmission services, Fuel supply and Fuel transmission agreements, including the Interconnection Agreement, necessary for Seller to perform its obligations hereunder in form and substance reasonably satisfactory to Buyer, and which agreements shall be in full force and effect as of the Initial Delivery Date.

(vi) The Commercial Operation Date shall have occurred or will occur simultaneously with the Initial Delivery Date.

(vii) Seller shall provide Buyer with Notice that the Commercial Operation Date has occurred or will occur simultaneously with the Initial Delivery Date.

(viii) No default or Event of Default shall have occurred and remain uncured as of the Initial Delivery Date.

(ix) Seller shall have provided Buyer with notice of the expected occurrence of the Initial Delivery Date no later than ten (10) Business Days prior and again three (3) days prior to its occurrence and again immediately prior to the date it occurs.

(x) Seller shall have entered into [list applicable PJM agreements], which shall be in full force and effect.

(xi) Seller has posted the Collateral required to be posted in favor of Buyer as of the Initial Delivery Date pursuant to Section 8.1(b).

[Sections 5.4 and 5.5 are Non-Negotiable Terms]

5.4 Delay Damages; Termination Upon Delay. Subject to Section 5.5, in the event that the conditions precedent to the occurrence of the Initial Delivery Date are not satisfied or waived on or prior to the Guaranteed Initial Delivery Date, for each day beginning with the day after the Guaranteed Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, Seller will be required to pay Buyer liquidated damages in the amount of \$[] [determined using \$0.2333 per kW of Guaranteed Capacity] ("Delay Damages"). The maximum amount of Delay Damages payable by Seller shall be \$[] [determined using daily Delay Damages amount multiplied by 365] ("Maximum Delay Damages"). In the event that Seller has not satisfied the conditions precedent to the Initial Delivery Date within 365 days of the Guaranteed Initial Delivery Date the ("Date Certain"), Buyer may elect to terminate the Agreement without liability or further obligation of any kind on the part of Buyer, and the

Seller shall pay a termination fee equal to \$[] [determined using \$100 per kW of Guaranteed Capacity] as liquidated damages to Buyer (the "Termination Fee"). The non-occurrence of the Initial Delivery Date by the Date Certain will also constitute an Event of Default pursuant to Section 12.1(a)(xii) of this Agreement. If such an Event of Default occurs, then any time prior to the satisfaction of the conditions precedent to the Initial Delivery Date, Buyer may elect to exercise the remedies that are available upon such an Event of Default pursuant to Article XII, or in the alternative, Buyer will have the option to extend the end date of the Services Term by a period equal to the difference between the Guaranteed Initial Delivery Date and actual Initial Delivery Date. For the avoidance of doubt, the Maximum Delay Damages shall apply to limit aggregate Delay Damages, but shall not limit payment of the full amount of the Termination Fee as liquidated damages as set forth above or the payment of liquidated damages in accordance with Article XII due to Buyer's right to terminate due to (i) Seller's failure to achieve the Initial Delivery Date, or (ii) Seller's failure to achieve any Critical Milestone.

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5.5 Effect of Force Majeure. Each Critical Milestone and the Guaranteed Initial Delivery Date shall be extended on a day-for-day basis without the payment of liquidated damages to the extent that such Critical Milestone or Guaranteed Initial Delivery Date is delayed as a result of a Force Majeure Event invoked by the Seller in accordance with Section 14.3.

Deleted: Each Critical Milestone and the Guaranteed Initial Delivery Date shall be extended on a day-for-day basis without the payment of liquidated damages, not exceeding an aggregate extension of 365 days, to the extent that such Critical Milestone or Guaranteed Initial Delivery Date is delayed as a result of a Force Majeure Event invoked by the Seller in accordance with Section 14.3.

ARTICLE VI

PAYMENT AND NETTING; RECORDS AND AUDIT RIGHTS

6.1 Billing and Payment. On or before the 15th calendar day of each month of the Contract Term, following the Initial Delivery Date, Seller shall invoice Buyer, in arrears, for all amounts due from Buyer to Seller under this Agreement, including, as applicable, the MFP, and the Regulatory Charges Payment, if any, less Third Party Payments. On or before the 15th calendar day of each month of the Contract Term, following the Initial Delivery Date (or Guaranteed Initial Delivery Date if earlier), Buyer shall invoice Seller, in arrears, for all amounts due from Seller to Buyer under this Agreement, including, as applicable, Delay Damages, Regulatory Charges Payment, [and costs of replacement Products obtained by Buyer pursuant to Section 3.9] **[Firm Power only]**. In each case, invoices shall include amounts accrued under this Agreement in the preceding month, provided that to the extent the determination of amounts due under this Agreement are based on invoices rendered by PJM or Governmental Authorities in the preceding month, the Parties acknowledge and agree that such amounts may relate to prior calendar months, as adjusted from time to time.

6.2 Netting. If each Party is required to pay the other an amount in the same month pursuant to this Agreement or any of the Ancillary Agreements, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Payment of all undisputed amounts owed shall be due by the later of ten (10) days after delivery of the owed Party's invoice or the twentieth (20th) day of the month ("Monthly Payment Date"). If either the invoice due date or Monthly Payment Date is not a Business Day, then such invoice or

payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the Monthly Payment Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the Monthly Payment Date to but excluding the date the delinquent amount is paid in full. Notwithstanding anything herein to the contrary, in the event Seller fails to post adequate amounts of Collateral as required by Article VIII, Buyer may withhold payments to be made to Seller pursuant to Section 6.1 in the amount of such deficiency or terminate the Agreement pursuant to Sections 12.1(a) and 12.2.

6.3 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustments arising hereunder is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible in accordance with the provisions of Article XIII (Dispute Resolution). Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date on which the payment is made. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent invoices, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Except with respect to audit corrections as provided in Section 6.6(a), any dispute with respect to an invoice is waived unless the other Party is Notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance giving rise to the payment obligation occurred the right to payment for such performance is waived.

6.4 Termination Payment. In the event that an Early Termination Date is declared pursuant to Article XII, Buyer shall determine the amount of the Termination Payment in accordance with Section 12.2 and shall deliver said calculation of the Termination Payment and if, and as, applicable an invoice to Seller within five (5) Business Days of the Early Termination Date. If Seller does not agree with Buyer's calculation of the Termination Payment, Seller shall deliver its own calculation of the Termination Payment to Buyer along with the payment of any undisputed amount owed by Seller to Buyer within five (5) Business Days of its receipt of Buyer's calculation. Buyer shall pay any undisputed amount of the Termination Payment owed by Buyer to Seller within twenty (20) Business Days after the Early Termination Date. Any amounts in dispute between the Parties shall be resolved by dispute resolution provided for hereunder.

6.5 Records. Each Party shall keep and maintain all books and records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement, or in verifying such party's performance hereunder, including, without limitation, operating logs, meter readings and financial records. All such records shall be retained by each Party for at least three (3) calendar years following the calendar year in which such records were created.

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6.6 Audit.

(a) Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense, upon reasonable notice and during normal business hours, to examine and copy the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Energy and other Products delivered or otherwise provided pursuant to this Agreement. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

(b) Reports Due to Buyer. Seller will provide to Buyer the following information with respect to the Project and the Unit(s):

(i) Upon the request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Project equipment;

(ii) A report summarizing the results of maintenance performed during each Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance or Outage;

(iii) Before the Commercial Operation Date, at the same time as provided to the lenders providing financing for the Project, a monthly progress report stating the percentage completion of the Project and a summary of construction activity during the prior Month;

(iv) Before the Commercial Operation Date, at the same time as provided to the lenders providing financing for the Project, a monthly report containing a summary of construction activity contemplated for the next month; and

(v) [Other safety, performance and financial information and reports to be determined by Parties].

(c) Access Rights. Upon reasonable prior notice (in light of the circumstances) and subject to the safety rules and regulations of Seller, Seller will provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Unit(s) and the Project: (i) for the purpose of reading or testing metering equipment, (ii) as necessary to witness any required generation capability tests necessary to determine the amount of generation capability associated with the Unit(s), (iii) in connection with the operation and maintenance of the interconnection facilities, (iv) to provide tours of the Project to customers and other guests of Buyer (not more than 12 times per year), (v) for purposes of implementing Section 6.6, and (vi) for other reasonable purposes at the reasonable request of Buyer.

6.7 Payments. All amounts due under this Agreement must be sent via wire transfer to an

account and address to be specified following the date of this Agreement by each Party in a written Notice to the other Party, as updated from time to time.

ARTICLE VII

LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF LIQUIDATED DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF LIQUIDATED DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF LIQUIDATED DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN. IF NO REMEDY OR MEASURE OF LIQUIDATED DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF THE TERMINATION PAYMENT OR ANY LIQUIDATED DAMAGES EXPRESSLY HEREIN PROVIDED, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNITEE UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11.1 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING FORFEITURES OF DEPOSITS, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE FULL HARM OR LOSS.

ARTICLE VIII

CREDIT AND COLLATERAL REQUIREMENTS

8.1 Timing and Use of Collateral. [Sections 8.1-8.3 are Non-Negotiable Terms]

(a) Development Period Security. On the Execution Date, Seller shall be required to establish collateral in favor of Buyer by providing Buyer with a Letter of Credit from a Qualified Issuer to secure Seller's obligations under this Agreement in the period between the Execution Date and the Initial Delivery Date (the "Development Period Security"). The Development Period Security to be provided on the Execution Date pursuant to this Section 8.1(a) shall be in an amount equal to the product of (x) \$50 [(\$20 for intermittent renewable energy projects)], multiplied by (y) the Guaranteed Capacity (expressed in kilowatts) and shall be maintained in full force and effect by Seller until its expiry pursuant to the terms hereof. By not later than fifteen (15) days after the Effective Date, the amount of the Development Period Security shall be increased to equal the sum of (i) the product of (x) \$100 [(\$40 for intermittent renewable energy projects)], multiplied by (y) the Guaranteed Capacity (expressed in kilowatts). In the event Buyer draws on the Development Period Security to pay Delay Damages, Seller shall promptly, and in all events within fifteen (15) days, replenish the amount of the Development Period Security by the amount drawn. In the event Buyer draws on the Development Period Security to pay Delay Damages, Seller shall promptly, and in all events within fifteen (15) days, replenish the amount of the Development Period Security by the amount drawn and if Seller fails to replenish the Development Period Security to its full amount as required, upon sixty (60) days notice, Buyer may terminate the Agreement. Buyer shall have the right to terminate the Agreement and retain the initial installment of the Development Period Security as liquidated damages if Seller fails to provide the increased amount of Development Period Security within fifteen (15) days after the Effective Date as set forth in this Section 8.1(a). Within ten (10) Business Days following the Initial Delivery Date, Buyer will return the remainder of the Development Period Security to Seller (after satisfaction of any amounts then due with respect to the Development Period Security under the Agreement).

(b) Collateral After Initial Delivery Date. Without regard for the Seller Credit Limit (defined below) in effect at any time, from and after the Initial Delivery Date, Seller must provide Buyer with a Letter of Credit from a Qualified Issuer to be effective no later than the Initial Delivery Date in an amount equal to ten percent (10%) of the then-effective Collateral Requirement (the "Minimum Liquid Collateral"). In addition to the Minimum Liquid Collateral, from and after the Initial Delivery Date, Seller is required to provide Buyer with a Letter of Credit from a Qualified Issuer to be effective no later than the Initial Delivery Date in an amount equal to the positive difference, if any, between the Collateral Requirement (minus the Minimum Liquid Collateral amount) and the Seller Credit Limit (defined below) (the "Additional Liquid Collateral"). Upon delivery of the Minimum Liquid Collateral and the Additional Liquid Collateral, Buyer shall promptly return the Development Period Security to Seller. The term "Collateral Requirement" as used herein shall mean the amount for Seller at any point in time after the Initial Delivery Date that is the lower of (i) the positive amount of the Marked-to-Market Value ("MtM Value") as determined pursuant to Appendix 2, and (ii) a maximum amount determined as \$200/kW [(\$80/kW for intermittent renewable energy projects)] times the

Guaranteed Capacity; provided in the event Seller is not rated at least BBB- by S&P or the equivalent by Moody's or Fitch and does not provide the Affiliate Guarantee from a Seller Guarantor that is rated at least BBB- by S&P or the equivalent by Moody's or Fitch, the Collateral Requirement shall be \$200/kW [(\$80/kW for intermittent renewable energy projects)] multiplied by the Guaranteed Capacity for which Seller shall provide Buyer with a Letter of Credit. The term "Seller Credit Limit" as used herein shall mean the amount of unsecured credit to be extended to Seller between \$0.00 and \$50,000,000.00 as calculated pursuant to the methodology set forth on Appendix 6 hereto based on the Credit Rating of Seller or the Seller Guarantor (if Seller Guarantor has executed an Affiliate Guarantee). If at any time the Credit Rating of Seller or Seller Guarantor (if applicable) falls below investment grade (BBB- by S&P or its equivalent with Moody's or Fitch), Buyer may at its option require Seller to post additional security of an acceptable nature and level subject to the applicable limits set forth above. [Note: Subject to the applicable limits set forth above in this Section 8.1(b), Buyer may require bidder to post acceptable credit support in the form of a Letter of Credit in amounts in excess of those described in Sections 8.1 and 8.2 to maintain compliance with Buyer's credit policies.]

(c) Adjustments to Additional Liquid Collateral During Service Term. During each week during the Services Term, Buyer shall calculate the MtM Value according to the formula set forth in Appendix 2 for the next twenty-four (24) months. Buyer shall be the calculation agent and shall provide weekly notices to Seller of the Collateral Requirement amount to be posted by Seller pursuant to Section 8.1(b). Within three (3) Business Days of such notice, Seller shall post the Additional Liquid Collateral and Minimum Liquid Collateral or Seller shall return such Minimum Liquid Collateral and Additional Liquid Collateral previously posted that is in excess of the sum of Buyer's then-required Minimum Liquid Collateral and Additional Liquid Collateral. Seller shall maintain in full force and effect each of the Minimum Liquid Collateral and the Additional Liquid Collateral in such amounts as may be determined from time-to-time through such date as of which all payment obligations to Buyer arising under this Agreement, including any compensation for the Products, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly such as through set-off or netting), subject to the applicable limits set forth in Section 8.1(b). Buyer shall arrange for the return of the unused portion of the Minimum Liquid Collateral and Additional Liquid Collateral promptly after each of the following have occurred: (1) the Services Term has ended or an Early Termination Date has occurred, as applicable; and (2) all payment obligations of the Seller arising under this Agreement, including any compensation for the Products, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly such as through set-off or netting). Any such Collateral shall not be deemed a limitation of damages.

(d) Use of Collateral. Buyer shall be entitled to draw upon the Collateral posted by Seller for any obligation of Seller arising under this Agreement that is not paid when due, whether or not an Early Termination Date has been declared.

8.2 Letter of Credit and Other Collateral.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article VIII, then not later than thirty (30) days prior to the stated expiration date of the Letter of Credit, the Seller shall renew (or cause the renewal of) each outstanding Letter of Credit, or replace (or cause the replacement of) each such Letter of Credit with one or

more replacement Letters of Credit from a Qualified Issuer in the amount required by this Agreement at the time of such renewal or replacement. In the event (A) the issuer of a Letter of Credit shall fail to meet the requirements of a Qualified Issuer; or (B) the issuer of an outstanding Letter of Credit indicates its intent not to renew such Letter of Credit; or (C) an issuer of a Letter of Credit shall fail to honor the beneficiary's properly documented request to draw on an outstanding Letter of Credit, then, within five (5) Business Days thereafter, Seller shall provide a substitute Letter of Credit from a Qualified Issuer other than the bank that has been downgraded, refused to renew or failed to honor the outstanding Letter of Credit ("Cure"). If Seller does not receive a replacement Letter of Credit from a Qualified Issuer within the time specified in either of the two preceding sentences, it may draw on the full available amount of the Letter of Credit. Amounts drawn in such circumstances shall be held directly by the Buyer bearing interest each day at the rate per annum equal to the Monthly Federal Funds Rate as reported in Federal Reserve Bank Publication H.15-519 or its successor publication (as set on a monthly basis based on the latest month for which such rate is available) on any unapplied balance held by Buyer as described herein. Amounts drawn shall be available to be applied by Buyer for the reasons set forth in Section 8.1(d) under the conditions set forth in the Letter of Credit. If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or such Letter of Credit fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet its obligations pursuant to this Article VIII or Article V, as applicable.

(b) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering a Letter of Credit or other form of Collateral shall be borne by Seller. If Buyer draws on a Letter of Credit due to a failure by Seller to satisfy a payment obligation under the Agreement, Buyer shall not terminate the Agreement or declare a default hereunder if the proceeds from the draw satisfy in full the payment obligation; provided that Seller replenishes such Collateral within three Business Days.

8.3 Buyer's Lien. In the event that Buyer and Seller agree that the collateral requirements of Section 8.1 and Section 8.2 are inadequate to secure Seller's obligation hereunder Seller shall grant to Buyer a present and continuing perfected Lien on and security interest in all of Seller's right, title and interest in and to the equipment associated with the Project which Lien shall be subordinate only to the Project Permitted Lien(s), if any, granted to Persons not related to or affiliated with Seller providing construction or term debt financing for the Project. Any Lien and security interest in favor of Buyer set forth in the previous sentence shall be created and evidenced by appropriate security agreements, including a mortgage in favor of Buyer (collectively, the "Project Security Agreement"), to be entered into on or before the Effective Date by the Buyer and Seller in form and substance satisfactory to Buyer.

ARTICLE IX

GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all

Deleted: To secure its obligations under this Agreement, Seller shall grant to Buyer a present and continuing perfected Lien on and security interest in all of Seller's right, title and interest in and to the Project and its other assets, which Lien shall be subordinate only to the Project Permitted Lien(s), if any, granted to Persons not related to or affiliated with Seller providing construction or term debt financing for the Project; provided, that the amounts secured and given priority by such Project Permitted Lien(s) shall not exceed seventy percent (70%) of the total cost of the Project and such non-affiliated Persons providing construction or term debt financing for the Project shall be permitted to possess a Lien on the remaining thirty percent (30%) of the total cost of the Project that is subordinate to Buyer's Lien described above. The Lien and security interest in favor of Buyer set forth in the previous sentence shall be created and evidenced by appropriate security agreements, including a mortgage in favor of Buyer (collectively, the "Project Security Agreement"), to be entered into on or before the Effective Date by the Buyer and Seller in form and substance satisfactory to Buyer.

taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Regulatory Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Regulatory Charges") on or with respect to the Products arising before and at the Delivery Point, including ad valorem taxes, taxes related to the operation or maintenance of the Unit(s) or the Project, the use or consumption of Gas or other Fuels, and other taxes attributable to the Project or the Unit(s), land, land rights or interests in land for the Unit(s) and the Project. Buyer shall pay or cause to be paid all Regulatory Charges on or with respect to the Products from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). Notwithstanding the foregoing, in the event that a change in Law occurs which imposes future environmental compliance costs in the form of a Btu or carbon tax of general applicability on either Party with respect to this Agreement, the transactions contemplated by the Agreement, the Project or the Unit(s), Seller and Buyer shall treat the tax as a "pass-through" addition to Buyer's Energy Rate to the extent the cost of the tax is actually incurred by Seller. In the event a Party is required by Law or regulation to remit or pay Regulatory Charges which are the other Party's responsibility hereunder, the Party that is assessed shall provide Notice to the Party that is responsible for such amounts due (together with supporting documentation), the assessed Party shall promptly pay such Regulatory Charges when due and invoice the responsible Party in accordance with Article VI, and the responsible Party shall reimburse the assessed Party in full in accordance with Article VI no later than the next Monthly Payment Date, with interest at the Interest Rate from and including the date on which the assessed Party pays the Regulatory Charges until (but excluding) the date on which the responsible Party reimburses the assessed Party (cumulatively, the "Regulatory Charges Payment"). Nothing shall obligate or cause a Party to pay or be liable to pay any Regulatory Charges from which it is exempt under the Law; provided that an exempt Party shall bear the responsibility of proving its exemption as necessary to avoid the unjust imposition of the tax on the other Party.

Deleted: Project or the Unit(s), Seller and Buyer shall treat a portion of the tax as a "pass-through" addition to Buyer's Energy Rate to the extent the cost of the tax is actually incurred by Seller, in an amount equal to the amount of tax per MWh attributable to the average level of emissions subject to the tax from all electric generating facilities in the PJM Classic market.

ARTICLE X

REPRESENTATION AND WARRANTIES

10.1 Representations and Warranties.

(a) Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that as of the Execution Date:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in the State of Delaware and in each other jurisdiction in which its operations or the ownership of its properties require it to be qualified, except where the failure to so qualify would not have a material adverse effect on its ability to carry out the terms of the Agreement, its financial condition, or its ability to own its properties and transact its business;

(ii) except for the Permits necessary to construct, operate and maintain the Project in the case of the Seller, it has all Permits necessary for it to perform its obligations under this Agreement and the Ancillary Agreements;

(iii) the execution, delivery and performance of this Agreement and the Ancillary Agreements are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it, and it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under this Agreement and the Ancillary Agreements;

(iv) execution and delivery of this Agreement and the Ancillary Agreements and performance or compliance with any provision hereof or thereof will not result in the creation or imposition of any Lien upon its properties, or a breach of, or constitute a default under, or give to any other Persons any rights of termination, amendment, acceleration or cancellation of such Party's articles of incorporation and bylaws (or equivalent) and any agreement to which it is a party or by which any of its respective properties is bound or affected;

(v) this Agreement, the Ancillary Agreements and each other document executed and delivered in accordance with this Agreement have been duly and validly executed and delivered and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(vi) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt;

(vii) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(viii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and

(ix) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

(b) Representations and Warranties of Seller. Seller represents and warrants to Buyer that throughout the Services Term:

(i) it will deliver the Products to Buyer free and clear of all Liens, security interests, claims and encumbrances on any interest therein or thereto by any Person;

(ii) the Unit(s) and the Project will be free and clear of all Liens, security interests, claims and encumbrances other than Project Permitted Liens;

(iii) it holds the rights to all Environmental Attributes from the Unit(s) and will transfer such rights to Buyer free and clear of all Liens, security interests, claims and encumbrances on any interest therein or thereto by any Person; and

(iv) it will take no action or permit any Person (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Unit(s) in order to satisfy its Resource Adequacy Requirements.

ARTICLE XI

INDEMNIFICATION AND INSURANCE

11.1 Indemnities.

(a) Indemnity by Seller. Seller shall release, defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, representatives and Affiliates ("Buyer Group") against and from any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to or are in any way connected with (i) the Product(s) prior to and at the Delivery Point; (ii) Seller's operation and/or maintenance of the Unit(s) and the Project; (iii) Seller's actions or inactions, including breach and violation, with respect to this Agreement, the Ancillary Agreements or other agreements related to the development, construction, ownership, operation or maintenance of the Unit(s) and the Project; (iv) any environmental matters associated with the Unit(s) and the Project, including the use, disposal or transportation of Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement; or (v) resulting from Seller's violation of any applicable Law, or requirements of PJM, the Commission, NERC, FERC or other Governmental Authorities; in each case including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, or others, excepting only such damages, claims, losses, liabilities, obligations, suits, proceedings, demands or assessments, as may be caused solely by the fault, willful misconduct or gross negligence of a member of the Buyer Group.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, attorneys, representatives and Affiliates ("Seller Group") against and from any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to or are in any way connected with the Product after the Delivery Point, including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, or others, excepting only such loss, claim, action or suit as may be caused solely by the fault, willful misconduct or gross negligence of a member of the Seller Group.

(c) Notice of Claim.

(i) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of a claim for which it is entitled to indemnity under this Section 11.1, the Party seeking indemnification hereunder (the "Indemnatee") will promptly notify the Party against whom indemnification is sought (the "Indemnitor") in writing of any damage, claim, loss, liability or expense which the Indemnatee has determined has given or could give rise to a claim under Section 11.1(a) or (b). (The written notice is referred to as a "Notice of Claim"). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnatee regarding the claim.

(ii) Notice of Third Party Claim. If an Indemnatee receives notice of the assertion or commencement of a Third Party Claim against it with respect to which an Indemnitor is obligated to provide indemnification under this Agreement, such Indemnatee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) calendar days after such Indemnatee's receipt of notice of such Third Party Claim. Such Notice of Claim will describe the Third Party Claim in reasonable detail, will include copies of all material written evidence thereof and will indicate, if reasonably practicable the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnatee. The Indemnitor will have the right to participate in, or, by giving written Notice to the Indemnatee, to assume the defense of any Third Party Claim at such Indemnitor's own expense and by such Indemnitor's own counsel (as is reasonably satisfactory to the Indemnatee), and the Indemnatee will cooperate in good faith in such defense.

(iii) Direct Claim. Any Direct Claim must be asserted by giving the Indemnitor written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of sixty (60) calendar days from receipt of such notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such sixty-day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnatee will be free to seek enforcement of its rights to indemnification under this Agreement.

(iv) Failure to Provide Notice. A failure to give timely notice or to include any specified information in any notice as provided in this Section 11.1(c) will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, the Indemnitor is not obligated to indemnify the Indemnatee for the increased amount of any claim which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

(d) Defense of Third Party Claims. If, within ten (10) calendar days after giving a Notice of Claim regarding a Third Party Claim to an Indemnitor pursuant to Section 11.1(c)(ii), an Indemnatee receives written notice from such Indemnitor that the Indemnitor has elected to

assume the defense of such Third Party Claim as provided in the last sentence of Section 11.1(c)(ii), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnatee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) calendar days after receiving written notice from the Indemnatee that the Indemnatee believes the Indemnitor has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnatee in respect of all Indemnifiable Losses relating to the matter, the Indemnatee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnatee, the Indemnitor will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnatee for which the Indemnatee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnatee if such settlement provides a full release to the Indemnatee and no requirement that the Indemnatee acknowledge fault or culpability. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnatee for which the Indemnatee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give written notice to the Indemnatee to that effect. If the Indemnatee fails to consent to such firm offer within ten calendar days after its receipt of such notice, the Indemnatee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnatee up to the date of such notice.

(e) Subrogation of Rights. Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnatee against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (i) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (ii) until the Indemnatee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnatee's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, each such Indemnatee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

(f) Rights and Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Section 11.1 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.2 Insurance. [Note: Insurance provisions and limits project-specific and subject to Buyer internal approval] Throughout the term of this Agreement, Seller shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, the following insurance coverages with an insurance company or companies rated not lower than "A" by A.M. Best Company and be responsible for its subcontractors maintaining sufficient limits of the appropriate insurance coverage consistent with Good Utility Practices.

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation and basic employer's liability insurance for all employees in accordance with applicable state and federal labor codes, acts, Laws or statutes.

(ii) Employers' Liability insurance with limits of at least \$[] for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

(i) Comprehensive or commercial general liability insurance written on an occurrence basis with a combined single limit of \$[] million per occurrence, including premises/operations, broad form property damage liability, explosion and collapse hazard coverage, blanket contractual liability encompassing the indemnity provisions of this Agreement, independent contractors, products and completed operations, personal injury, and sudden and accidental seepage and pollution and where applicable, watercraft protection and indemnity liability (and, if such insurance is obtained as part of Seller's general insurance policy for all its projects and assets, such policy, or policies, shall be written on a project-specific basis so that the limits set forth apply solely to the ownership, construction, use, operation and maintenance of Seller's interest in the Project, the Unit(s) and the interconnection facilities).

(c) Business Auto.

(i) Comprehensive Automobile Liability insurance with bodily injury, death and property damage combined single limits of at least \$[] per occurrence covering vehicles owned, hired or non-owned.

(d) Excess Umbrella Liability Insurance.

(i) Excess Umbrella Liability Insurance with a single limit of at least \$[] per occurrence in excess of the limits of insurance provided above.

(e) Additional Insurance Provisions.

(i) Such insurance shall include (1) provisions or endorsements naming Buyer, its Affiliates, directors, officers and employees as additional insureds; (2) provisions that such insurance is primary insurance with respect to the interest of Buyer and such additional insureds and that any insurance maintained by Buyer is excess and not contributory insurance with the insurance required hereunder; (3) a cross-liability or severability of insurance interest clause; (4) provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to Buyer; and (5) provisions by which the insurer waives all rights of subrogation against Buyer and the additional insureds listed above. Seller shall provide Buyer with certificates of insurance evidencing the policies, provisions and endorsements listed above within ten (10) days after they have been obtained. In addition, upon request, Seller shall provide Buyer with copies of the insurance policies evidenced by such certificates. The insurance coverage described above in this section shall be primary and not excess or contributing with respect to any other coverage available to Seller or to its

Affiliates and shall not be deemed to limit Seller's liability under this Agreement.

(ii) Reviews of such insurance may be conducted by Buyer on an annual basis and in addition, Buyer may inspect the original policies or require complete certified copies, at any time.

(iii) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(iv) The insurance carrier or carriers and form of policy shall be subject to review and approval by Buyer.

ARTICLE XII

EVENTS OF DEFAULT; REMEDIES

12.1 Events of Default.

(a) The Seller will be deemed a "Defaulting Party" upon the occurrence of any of the following (each a "Seller's Event of Default"):

(i) Failure to deliver any Product produced by the Unit(s) to Buyer as required under the Agreement on five (5) occasions in any calendar year, and intentional delivery of any such Product to any third party if not expressly permitted under the Agreement.

(ii) Any material asset of Seller constituting part of or used in connection with the Project is taken upon execution or by other process of Law or if taken upon or subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within twenty-one (21) days after its levy.

(iii) Upon the occurrence of any material misrepresentation or omission in any metering (or submetering) or any report or notice of a Unit's availability and capability or Outage required to be made or delivered by Seller to Buyer, or undue delay or withholding of such data, report or Notice of a Unit's availability and capability or Outage, which misrepresentation, omission or undue delay or withholding is (i) not cured within five (5) Business Days of written notice provided by Buyer and (ii) is caused by Seller's willful misconduct, gross negligence or bad faith,

(iv) Seller fails to post, maintain, substitute, supplement, replenish or renew when due the Development Period Security and such failure continues for five (5) days after Notice thereof is received, except for the failure to post the remainder of the Development Period Security fifteen (15) days after the Effective Date, as to which no Notice is required.

Deleted: Upon the occurrence of any material misrepresentation or omission in any metering (or submetering) or any report or notice of a Unit's availability and capability or Outage required to be made or delivered by Seller to Buyer, or undue delay or withholding of such data, report or Notice of a Unit's availability and capability or Outage, which misrepresentation, omission or undue delay or withholding is caused by Seller's willful misconduct, gross negligence or bad faith.

(v) Seller fails to comply with the Resource Adequacy Requirements as and to the extent required in the Agreement which failure continues for sixty (60) days after Notice thereof is received from Buyer, and provided such failure shall not constitute a "Seller's Event of Default" if Buyer has failed to compensate Seller to the extent required in Section 3.14.

(vi) During the Services Term, the UCAP of the Unit(s) is below 70% of the then-applicable Contract Capacity for a period of six (6) consecutive months and such reduction in UCAP is not due to a Force Majeure Event. **[Firm Power]**

(vii) During the Services Term, a Force Majeure Event results in the UCAP of the Unit being less than 70% of the then-applicable Contract Capacity for a period of twelve (12) consecutive months. **[Firm Power]**

(viii) Seller fails to comply with the collateral security requirements in Article VIII and such failure continues for five (5) Business Days after Notice thereof is received.

(ix) If a Project Security Agreement is agreed to by the Parties, such Project Security Agreement (after the effective date thereof) shall cease, except in accordance with its terms, to be effective to grant a perfected Lien and security interest in Seller's right, title and interest in and to the Project, or such Lien and security interest shall be subordinate to any other Lien or security interest other than Project Permitted Lien(s).

(x) A failure to complete the conditions precedent to the Initial Delivery Date on or before the Date Certain or a delay in completing any Critical Milestone of more than twelve (12) months (in each case, as extended due to a Force Majeure Event in accordance with Section 5.5, if applicable).

(b) A Party will be deemed a Defaulting Party upon the occurrence of, including but not limited to, any of the following (each a "Party's Event of Default"):

(i) A Party fails to pay an amount when due hereunder and such failure continues for ten (10) Business Days after notice thereof is received.

(ii) A Party fails to perform any of its material obligations under this Agreement and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) days after Notice thereof is received, specifying the Event of Default; provided, however, that such period shall be extended for an additional reasonable period if cure cannot be effected in thirty (30) days and if corrective action, reasonably calculated to cure the default within a reasonable period of time, is instituted by the Defaulting Party within the thirty (30) day period and so long as such action is diligently pursued until such default is corrected; but not to exceed ninety (90) days cumulatively.

Deleted: <#>(viii) During the Services Term, the Equivalent Availability Factor of the Project is below sixty percent (60%) for a period of twelve (12) consecutive months for a reason other than a Force Majeure Event. **[Unit Contingent]** ¶
(ix) During the Services Term, the Equivalent Availability Factor of the Project is below sixty percent (60%) for a period of twenty-four (24) consecutive months due to a Force Majeure Event over a rolling 12 month period. **[Unit Contingent]**

Deleted: x

Deleted: i

Deleted: The Project Security Agreement

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(iii) any default shall occur under any of the Ancillary Agreements or the Interconnection Agreement and such default shall continue beyond any period of grace provided therein with respect thereto.

(iv) A Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian of its assets (including, in the case of Seller for a substantial part of the Unit(s) or the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.

(v) Absent the consent or acquiescence of a Party, appointment of a trustee, receiver or custodian of its assets (including in the case of Seller, for a substantial part of the Unit(s) or the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within sixty (60) days.

(vi) Any Permit necessary for a Party to be able to perform all of the transactions contemplated by the Agreement is not received, expires or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation or suspension thereof, by reason of the action or inaction of such Party and such failure to obtain, expiration, revocation or suspension creates a material adverse impact on the other Party.

(vii) Upon the occurrence of any material breach of any representation, covenant or warranty made by a Party in this Agreement, thirty (30) days after the written Notice from the other Party that any material representation, covenant or warranty made in this Agreement is false, misleading or erroneous in any material respect without the breach having been cured.

12.2 Declaration of Early Termination Date and Calculation of Termination Payment.

(a) Upon the occurrence of an Event of Default, the non-defaulting Party ("Non-Defaulting Party") shall have the right to (i) send Notice, designating a day, no earlier than the day such Notice is deemed to be received (as provided in Section 14.1) and no later than 20 days after such Notice is deemed to be received (as provided in Section 14.1), as an early termination date of this Agreement ("Early Termination Date"), to accelerate all amounts owing between the Parties, terminate the Services Term effective as of the Early Termination Date and collect liquidated damages in the amounts set forth below in this Section 12.2 ("Termination Payment"); (ii) withhold any payments due to the Defaulting Party under this Agreement; (iii) suspend performance; and (iv) subject to the terms of the Agreement, exercise any other right or remedy available at Law or in equity, other than specific performance, to the extent otherwise permitted under this Agreement.

(b) Prior to commencement of construction of the Unit(s) by Seller, if Buyer is the Defaulting Party, Buyer will pay to Seller as liquidated damages a Termination Payment equal to the costs reasonably incurred by Seller in the development of the Unit(s) plus or a breakage fee equal to \$10 per kW multiplied by the Guaranteed Capacity. Prior to the Initial Delivery Date, if Buyer is the Defaulting Party and construction of the Unit(s) has commenced, the Termination Payment to be paid by Buyer shall be calculated in the manner set forth in Section 12.2(d) below.

(c) If Seller is the Defaulting Party, Seller will pay to Buyer as liquidated damages a Termination Payment equal to the full amount of the Termination Fee defined in Section 5.4, plus the amount of any unpaid Delay Damages due Buyer pursuant to Section 5.4 as of the date of termination.

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(d) On and after the Initial Delivery Date, the Termination Payment will be, subject to subsection (e) below, the aggregate of all Settlement Amounts netted into a single amount, where the "Settlement Amount" is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the liquidation of this Agreement as of the Early Termination Date; provided that in the event the Non-Defaulting Party experiences Gains, Gains shall not be netted against Costs in determining such Settlement Amount, and the Non-Defaulting Party shall be compensated in full for all Costs it incurs.

(e) Termination Payments shall be payable in accordance with Section 6.4. Disputes regarding the Termination Payment shall be determined in accordance with Article XIII. In no event will the Non-Defaulting Party be required to pay its Gains to the Defaulting Party.

Deleted: Except for termination on account of Seller's failure to meet the original or extended Permitting Deadline, prior to the Initial Delivery Date, if Seller is the Defaulting Party, Seller will pay to Buyer as liquidated damages a Termination Payment equal to the full amount of the Termination Fee defined in Section 5.4, plus the amount of any unpaid Delay Damages due Buyer pursuant to Section 5.4 as of the date of termination. In the event of termination of the Agreement due to Seller's failure to meet the original or extended Permitting Deadline, Buyer shall retain as liquidated damages the amount specified in Section 5.2(c).

12.3 Right of Set-off and Payments by Non-Defaulting Party. The Non-Defaulting Party shall be entitled, at its option, to setoff against any amounts owed to the Defaulting Party by the Non-Defaulting Party under the Agreement, the Interconnection Agreement, the Ancillary Agreements or otherwise any amounts payable by the Defaulting Party to the Non-Defaulting Party under the Agreement, the Interconnection Agreement, the Ancillary Agreements or otherwise. This section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law or otherwise). Notwithstanding any provision to the contrary contained in the Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Agreement until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that all obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under the Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed.

12.4 Termination Upon Consolidation of Seller. [Non-Negotiable Term] In addition to the Event's of Default set forth in this Article 12, Buyer has the right to terminate the Agreement with no further obligation or liability on the part of either Party if at any time during the term of the Agreement Buyer's independent outside auditing firm determines that Buyer must consolidate Seller in its financial statements under FIN No. 46 due to Seller's actions or other changes in circumstance. Prior to terminating the Agreement pursuant to this Section 12.4, Buyer shall provide Seller with prior written notice of such termination and thirty (30) days in which to cure the action or circumstances identified by Buyer's independent outside auditing firm as triggering consolidation under Fin No. 46. In the event Seller is unable to cure the action or circumstance triggering consolidation, as determined by Buyer, Seller will have thirty (30) days to appeal Buyer's termination to the Commission for expedited review, which appeal will have the effect of staying Buyer's termination pending a Commission review of the measures available to Seller to avoid consolidation and termination of the Agreement as described herein.

12.5 Rights And Remedies Are Cumulative. Except as provided herein, the rights and remedies of a Party pursuant to this Article XII shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE XIII

DISPUTE RESOLUTION

13.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article XIII. Notwithstanding the foregoing, either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of procedure set forth in this Article XIII.

13.2 Management Negotiations. The parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may initiate resolution of the dispute as provided in Section 13.3. All negotiations pursuant to this clause are confidential.

13.3 Dispute Resolution Before Commission. If the dispute cannot be so resolved by negotiation as set forth in Section 13.2 above, it shall be resolved at the request of any Party through the dispute resolution process administered by the Commission.

ARTICLE XIV
MISCELLANEOUS

14.1 Notices. Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "Notify"), all notices, requests, statements or payments shall be made to the Parties using the contact information set out below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the Notice is received or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt. Notwithstanding the foregoing, Notices of Outages or other intra-day information regarding the Unit(s)' operations are to be provided as required pursuant to Sections 3.5 and 3.10; and any scheduling and dispatching shall be done pursuant to the Operating Procedures.

To Buyer: Delmarva Power & Light Company [Address]
 [Address]
 [Phone]
 [Fax]
 Attn:

with a copy to: [_____]
 [Address]
 [Address]
 [Phone]
 [Fax]
 Attn:

to Seller: [_____]
 [Address]
 [Address]
 [Phone]
 [Fax]
 Attn:

with a copy to: [_____]
 [Address]
 [Address]
 [Phone]
 [Fax]
 Attn:

14.2 Changes to Notice and Invoicing Information. The address and contact information to which notices or invoices shall be mailed, or amounts paid, may be changed from time to time by either party by Notice served as hereinabove provided.

14.3 Force Majeure Event.

(a) Effect of Force Majeure Event. Except as provided in Section 12.1(a)(vii) and 12.1(a)(ix), a Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure Event, and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure or delay of performance. Notwithstanding the forgoing, (i) a failure to make payments accrued prior to the Force Majeure Event when due shall not be excused; and (ii) from and after the Initial Delivery Date, the unavailability of the Capacity of the Unit(s) due to a Force Majeure Event shall not relieve Seller from the effects of the Unit(s) being considered unavailable for purposes of Article IV of the Agreement. The burden of proof for establishing the existence and consequences of a Force Majeure Event lies with the Party initiating the claim.

(b) Notice of Force Majeure Event. In addition to satisfying the notification provisions set forth in Section 3.5(b), as applicable, within two (2) Business Days of the commencement of a Force Majeure Event, the Party desiring to invoke a Force Majeure Event as a cause for delay in its performance of, or failure to perform, any obligation (other than the payment of money) hereunder, shall provide the other Party Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event including the expected duration and effect of such Force Majeure Event. Failure to provide timely Notice constitutes a waiver of a claim of a Force Majeure Event. Promptly, but in any event within ten (10) days, after a Notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such Force Majeure Event.

(c) Mitigation of Force Majeure. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such Force Majeure Event. The Parties shall take all reasonable steps to ensure resumption of normal performance under this Agreement after the cessation of any Force Majeure Event.

14.4 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

14.5 Assignment. Without Buyer's prior written consent, Seller shall not assign this Agreement or its rights hereunder or assign or transfer control of the Unit(s) or the Project, in each case including to Affiliates and including direct and indirect transfers and assignments. Buyer's consent in each case set forth above in this Section 14.5 shall not be unreasonably

withheld upon a showing of the proposed assignee's technical and financial capability to fulfill the requirements of Seller, as determined by Buyer in its reasonable discretion. Subject to the rights of senior secured lender(s) to the Project, Seller shall obtain Buyer's prior written consent (not to be unreasonably withheld) to Changes of Control, such consent to be granted upon a showing that such Change in Control does not materially adversely affect Seller's creditworthiness or qualification to perform Seller's obligations under the Agreement. Notwithstanding the foregoing, Seller may, without relieving itself from liability hereunder, transfer, sell, pledge, encumber or assign the Unit(s), the Project, this Agreement or the accounts, revenues or proceeds under the Agreement to unrelated third parties for the purposes of obtaining project financing for the Unit(s). In connection with any assignment made pursuant to the previous sentence, at the request of Seller, Buyer shall execute a consent to assignment substantially in the form attached hereto as Appendix 8; and provided further, Seller shall be responsible for Buyer's reasonable costs associated with review, negotiation, execution and delivery of such documents, including attorneys' fees.

14.6 Choice of Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

14.7 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. All indemnity rights shall survive the termination of this Agreement. All provisions relating to limitations of liability shall survive without limit. This Agreement shall be binding on each Party's successors and permitted assigns. Subject to Section 14.15, nothing in this Agreement shall in any way restrict or otherwise limit the rights of either Party under Sections 205 and 206 of the Federal Power Act.

14.8 Confidentiality. Throughout the Contract Term, neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than: (i) the Party's employees, lenders, counsel, accountants, advisors or rating agencies who have a need to know such information and have agreed to keep such terms confidential on terms commensurate with the terms set forth in this Section 14.8; (ii) in order to comply with any applicable Law, regulation, or any exchange, control area or PJM rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"); (iii) in order to comply with any applicable regulation, rule, or order of the Commission or FERC; or (iv) as Buyer deems necessary in order to demonstrate the reasonableness of its actions to duly authorized Governmental Authorities or regulatory agencies including the Commission, the Delaware Department of Natural Resources and Environmental Control or any division thereof, and any other regulatory agency which claims jurisdiction over the subject matter of the Agreement or its subject matter. In connection with requests made pursuant to clause (ii) of this Section 14.8 ("Disclosure Order") and disclosures pursuant to clause (iii) or (iv) ("Regulatory

Disclosures”) each Party shall, to the extent practicable, use reasonable efforts to: (i) notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or making the Regulatory Disclosures or (ii) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce or seek relief in connection with the confidentiality obligation set forth in this Section. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section.

14.9 Recordkeeping. The Parties shall, for five years after creation or such longer period as may be required by applicable Law, each keep and maintain accurate and detailed records relating to the Unit’s(s’) hourly deliveries of Energy and other Products and Fuel consumption and such other information (including financial statements and information) as required to support the amounts due and payable as between the Parties pursuant to this Agreement. Such records shall be made available by the Party holding such records to the other Party for inspection during normal business hours upon reasonable Notice.

14.10 Entire Agreement; Severability. This Agreement, the Interconnection Agreement and the Ancillary Agreements, including the exhibits, schedules, appendices, documents, certificates and instruments referred to herein or therein and the other contracts, agreements and instruments contemplated hereby or thereby, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Agreement, the Interconnection Agreement and the Ancillary Agreements supersede all prior agreements and understandings between the Parties with respect to the transactions contemplated by this Agreement. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties. Any determination that specific parts of this Agreement are severable shall not affect in any way the Parties’ assent to this Agreement, the Interconnection Agreement and the Ancillary Agreements, including the exhibits, schedules, appendices, documents, certificates and instruments referred to herein or therein and the other contracts, agreements and instruments contemplated hereby or thereby, as one integrated, non-severable contract.

14.11 Treatment of Agreement and Related Documents. Seller acknowledges and agrees that this Agreement, the Interconnection Agreement and the Ancillary Agreements including the exhibits, schedules, appendices, documents, certificates and instruments referred to herein or therein and the other contracts, agreements and instruments contemplated hereby or thereby to which both Buyer and Seller or their Affiliates are or become parties, while each independently setting forth the exclusive terms and conditions pertaining to the subject matter thereof, for purposes of contract interpretation, do collectively provide Buyer rights and interests in the Project related to and/or necessary for the Project, and, accordingly, Seller agrees, for itself and its successors and assigns, that all of such contracts shall be treated as an integrated economic whole, and therefore, in accordance with the standards in Section 14.15, in any bankruptcy or insolvency proceeding involving it or any of its Affiliates, all such contracts shall either all be

assumed or all be rejected to the extent that assumption or rejection is permitted by Law.

14.12 Conflicts With Ancillary Agreements. Except as expressly provided herein or therein, in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Interconnection Agreement and any Ancillary Agreement, the terms of this Agreement shall prevail.

14.13 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

14.14 Forward Contract. The Parties acknowledge and agree that the Agreement and the transactions consummated thereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Seller is a "forward merchant" within the meaning of the United States Bankruptcy Code.

14.15 Future Treatment. The Parties agree and acknowledge that the standard of review for any avoidance, breach, rejection, termination, or other cessation of performance or changes to any portion of this integrated, non-severable Agreement (as described in Section 14.11) over which FERC has jurisdiction, whether proposed by the Seller, the Buyer, a non-party, or FERC acting sua sponte, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Co.*, 350 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956). The Parties further agree and acknowledge that the standard of review for any proposed avoidance, breach, rejection, termination, or other cessation of performance or changes to any portion of this integrated, non-severable Agreement (as described in Section 14.11) over which the United States District Court or the United States Bankruptcy Court for the district in which a proceeding is pending, whether proposed by the Seller, the Buyer, or a non-party, shall be the standard of review set forth in *In re Mirant Corp.*, 318 B.R. 100 (N.D. Tex. 2004). In connection with the application of such standards, the Parties agree that any failure to perform the Agreement on behalf of Seller would cause a disruption in the supply of electricity and may lead to an increase in rates paid by Buyer's customers. Nothing in this paragraph shall adversely affect, in any way, the protections afforded to a non-debtor counterparty under the United States Bankruptcy Code.

14.16 Certain Attorneys' Fees and Expenses. Seller agrees to pay to the Buyer, upon written demand from the Buyer from time to time, the amount of all expenses and costs, including reasonable attorneys' fees and expenses, paid or incurred by the Buyer (i) after any of the obligations due to Buyer under this Agreement are not paid or performed when due (whether by demand, acceleration or otherwise), which arise as a result of such failure to pay or perform, and (ii) after a default or an Event of Default shall occur, which arise as a result of such Event of Default. Seller also agrees to pay to the Buyer, upon written demand by the Buyer from time to time, interest on the outstanding amount of such expenses and costs paid by the Buyer, from the date of the Buyer's demand for payment of such expenses until the same are paid in full, at the highest rate provided herein.

14.17 Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or acceptance of any Product or make or receive other Notices and perform other functions related to the administration of the Agreement on behalf of such Party ("Authorized Representative"). Such Notice shall include the scope of the Authorized Representative(s) individual authority and responsibilities. Either Party may change its designation of such persons and the scope of their individual authorities and responsibilities from time to time by

providing Notice.

14.18 Recordings. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the Recordings pursuant to this Agreement.

14.19 Obligation to Act in Good Faith, Etc. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, where the Agreement requires the consent, approval or similar action by a Party, such consent, approval, or action shall be made or given in such Party's sole discretion.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed by its authorized representative as of the date first written above.

Seller: [Counterparty] Buyer: DELMARVA POWER & LIGHT COMPANY

By: _____ By: _____

Name: Name:

Title: Title:

APPENDIX 1

THE UNIT(S) AND THE PROJECT

APPENDIX 2

MARKED-TO-MARKET VALUE

The Marked-to-Market Value or MtM Value as of any week during the Services Term will be equal to the net sum of the following:

1. Net Capacity Value: the gross capacity value will be the PJM [RPM] capacity (or a mutually agreed-upon equivalent) for the Contract Year times the Agreement's Net Capability obligations expressed in kW. The gross capacity value will be measured for each month of the rolling 24-month period following the week for which the calculation is being made (the "Relevant Period"). To determine the Net Capacity Value, from such gross capacity value will be subtracted the aggregate Capacity payments to be made by Buyer for each month of the Relevant Period expected under the Agreement for the Contract Capacity Seller is obligated to deliver.

2. Net Energy Value: the gross energy value will be the NYMEX Henry Hub end-of-day monthly forward price in (\$/MMBtu) times an 8,000 Btu/kWh implied heat rate divided by 1000 times the anticipated quantity of Energy to be delivered in each month of the Relevant Period following the week for which the calculation is being made. To determine the Net Energy Value, from such gross energy value will be subtracted the aggregate Energy payments anticipated for the quantity of Energy to be delivered in each month of the Relevant Period under the Agreement for the Energy Seller is expected to deliver.

[Note: Delmarva reserves the right to change the implied heat rate subject to the nature of the Agreement.]

APPENDIX 3

FORM OF MONTHLY CONSTRUCTION PROGRESS REPORT

APPENDIX 4

OUTAGE/AVAILABILITY NOTIFICATION FORM AND PROCEDURES

APPENDIX 5

CALCULATION OF MONTHLY CONTRACT CAPACITY PAYMENT AVAILABILITY ADJUSTMENT

[Appendix relevant for Unit-Contingent bids other than those for intermittent renewable energy facilities]

“AA” (Availability Adjustment) as used in Section 4.1(b) of the Agreement is the rolling average of the Monthly Adjusted Availability Factors (“MAAFs”) for the previous 12 months, subject to the following: (a) the rolling average of AA will be capped at 1.05 and (b) for each percentage that the rolling average of the MAAFs is below 0.90 for the previous 12 months, there will be a 3% reduction in the AA (but the AA shall never be less than 0.0). For example, if the 12-month rolling average of the MAAFs is 0.85, the AAF will be 0.75. [A complete detailed definition will be set forth in the PPA.]

The Monthly Adjusted Availability Factor (“MAAF”) shall be the product of the Equivalent Availability Factor for the particular month (“MEAF”) multiplied by the Monthly Adjustment Factor (“MAF”) set forth below divided by the Target Equivalent Availability Factor (“TEAF”) for the particular month. $MAAF = (MEAF * MAF) / TEAF$.

The TEAF is equal to the bidder’s annual Target Equivalent Availability Factor for the particular month, set out in Section 4.1 of the Agreement.

MEAF is the Equivalent Availability Factor (“EAF”) for the month, except if the Project’s monthly average off-peak hourly EAF exceeds the monthly average on-peak hourly EAF, the EAF for on-peak hours will be used in determining MEAF for the month. For example, if the EAF in June is 90%, but the EAF in off-peak hours is 95% and the EAF in on-peak hours is 85%, the MEAF in June will be 85%.

MAF is the Monthly Adjustment Factor.

MAF is as follows:

January 1.0
February 1.0
March 0.9
April 0.8
May 0.8
June 1.2
July 1.3
August 1.3
September 1.2
October 0.8
November 0.8
December 0.9

Example: TEAF in June is 93%. MEAF in June is 85%. $MAF = 1.2$. $MAAF = (.85 * 1.2) / .93 = 1.097$.

For the first 12 operating months of the Project, AA shall be calculated by using historical operating data for the Project where available and by using proxy data for other months assuming that the Project has

achieved the TEAF for such months. For example, if the Project becomes Commercially Operable in March and has operated through December, the capacity payments for December will be based on an AA calculated with plant performance data from March through December with a MAAF of 1.0 for January and February.

APPENDIX 6

METHODOLOGY FOR SELLER CREDIT LIMIT

The Seller Credit Limit, as calculated by Buyer, shall be the product of the Tangible Net Worth of Seller, or Seller Guarantor if Seller Guarantor has entered into an Affiliate Guarantee, times the percentage specified in the table below corresponding to such entity's then current Credit Rating with the specified rating agencies, up to the amount of the cap specified below applicable to the corresponding Credit Rating.

S&P Rating	Moody's Rating	Fitch Rating	Total Tangible Net Worth	Seller Credit Limit (Cap)
AAA to AA-	Aaa to Aa3	AAA to AA-	10%	\$50,000,000
A+ to A-	A1 to A3	A+ to A-	8%	\$40,000,000
BBB+ to BBB	Baa1 to Baa2	BBB+ to BBB	6%	\$30,000,000
BBB-	Baa3	BBB-	4%	\$20,000,000

If there is a difference among the Credit Ratings of the listed rating agencies, the lowest rating shall be used. If Seller (or Seller Guarantor if applicable) does not have a Credit Rating from one of the three credit rating agencies set forth above, the Seller Credit Limit shall be deemed to be zero.

The Seller Credit Limit shall be recalculated, and the amount of the Letters of Credits covering the Minimum Liquid Collateral and the Additional Liquid Collateral shall be appropriately adjusted, based on Seller's (or Seller Guarantor's, if applicable) most recent fiscal year-end audited financial statements or within five (5) Business Days of any change in Seller's (or Seller Guarantor's, if applicable) long-term senior unsecured Credit Rating.

APPENDIX 7

**CERTAIN REQUIREMENTS FOR INTERCONNECTION
AND OPERATION OF UNIT(S)**

APPENDIX 8
FORM OF CONSENT TO ASSIGNMENT

SCHEDULE 1
ANCILLARY SERVICES

SCHEDULE 2
CONTRACT CAPACITY

SCHEDULE 3
MILESTONES

SCHEDULE 4

PROJECT PERMITTED LIENS

SCHEDULE 5

RENEWABLE ENERGY CREDITS - LIMITATIONS ON MAXIMUM QUANTITY

SCHEDULE 6
SCHEDULING PARAMETERS

Seller will not commit less than [an entire Unit] to Buyer, nor sell [any] Product associated with a Unit to any Person other than Buyer (other than pursuant to an Instructed Operation as set forth in Section 3.5). Seller may not enter into [any] agreement or arrangement under which Product associated with Contract Capacity may be claimed by any Person other than Buyer for purpose of satisfying such Person's obligations to PJM or any other independent system operator having jurisdiction over such Person or the Unit(s). For the avoidance of doubt, Seller shall not cause the Unit to become subject to a Must-Run Generation agreement or any other obligation to deliver a Product to any other Person other than pursuant to an Instructed Operation, and Buyer shall have the exclusive right to enter into an Must-Run Generation agreement with respect to any Unit and/or resell any Product from any Unit, provided in each case that the Must-Run Generation agreement or resale would not result in a violation of the Operational Limitations of the affected Unit. Subject to the reporting requirements of Section 3.5, nothing herein shall bar Seller from complying with Instructed Operations; provided that if Seller receives an Instructed Operation other than through Buyer, Seller shall promptly report such event in accordance with Section 3.5(b). Seller acknowledges and agrees that Buyer may take whatever measures it elects to protest, challenge, eliminate, institute or modify any Instructed Operation, which may include communicating directly with the Governmental Authority or PJM, as applicable, responsible for such Instructed Operation. If during the Services Term Seller requires the ability to operate other than pursuant to Buyer's Schedule or as otherwise expressly contemplated herein (for example, for the purpose of conducting environmental testing or to test newly installed equipment), it shall notify Buyer, and Buyer and Seller shall work in good faith to accommodate Seller's need consistent with other provisions of this Agreement, provided Seller shall be liable for Buyer's costs in accommodating Seller's requests. Operations undertaken pursuant to the prior sentence shall not be deemed to be part of Buyer's Schedule. At all other times during the Services Term, Seller shall sell and make available exclusively to Buyer [all] the Products of the Unit(s), and Buyer shall have the exclusive right to schedule, re-sell or convey all Products to which it is entitled under this Agreement. To the extent that Seller receives any payment associated with the Unit(s) or the Products, including non-Energy or fixed payments received for or in connection with Resource Adequacy Requirements, Instructed Operations or any Must-Run Generation agreement, from any Person other than Buyer, Seller shall remit such payment to Buyer ("Third Party Payments"). Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be made pursuant to Article VI.

(i) Seller's Scheduled Notices of Availability. Each day, between the hours of 12:01 a.m. and 5 a.m., commencing one week prior to the expected Initial Delivery Date and continuing thereafter throughout the Services Term, Seller shall provide Buyer a complete and accurate Notice of the expected availability and Capacity of each Unit (as reasonably determined at that time) for that day and each of the next thirteen (13) days, setting forth therein the percentage of the Contract Capacity of that Unit that is expected to be available for Scheduled Operations and a disclosure of the existence and expected duration

of any Outage or any Instructed Operation, the amount of Capacity affected by such Outage and the nature and effect of any Instructed Operation on the Unit's availability, regardless of whether or the extent to which such Unit is then or may be scheduled for dispatch; provided that such information shall be provided only for days that are part of the Services Term. Additionally, each month, commencing one month prior to the expected Initial Delivery Date and continuing thereafter throughout the Services Term (at such time of month as agreed to by the Parties from time to time), Seller shall provide Buyer a complete and accurate Notice of the expected availability and Capacity of each Unit for the next calendar month (as reasonably determined at the time), setting forth therein the percentage of the Contract Capacity that is expected to be available for Scheduled Operations and a disclosure of the existence and expected duration of any Outages, and the amount of Capacity affected by such Outage. The notices required pursuant to this Section shall be set forth on the forms attached as Appendix 4. Notices required pursuant to this Section 3.5(b)(i) shall be referred to as "Scheduled Availability Notices."

(ii) Seller's Continuing Obligations To Provide Notice of Availability. During the Services Term, to the extent not reported in a Scheduled Availability Notice or pursuant to Section 3.10, Seller shall (A) notify Buyer's designated representative, orally or through an automated notification system, of every Outage of a Unit or imposition of an Instructed Operation as soon as possible (and in any event, using commercially reasonable efforts to do so within ten (10) minutes after the occurrence of such Outage), whether or not the Unit is scheduled for operation, (B) provide a written estimate of the expected duration of such Outage and/or nature of the Instructed Operation within one hour after submittal of the initial notification pursuant to clause (A) of this sentence, and (iii) submit an Outage/Availability Notification Form, in the form attached as Appendix 4, to Buyer in accordance with the instructions shown on the form. The Seller shall update Buyer periodically through the day as information become available as well as through Scheduled Availability Notices, with any revised estimates regarding the Unit's return to full output capability and shall promptly provide Buyer notice of any further change in the availability of a Unit or Products for dispatch from that set forth in the last notice provided, whether or not the Unit is scheduled for operation, including any developments that will affect the severity or duration of each Outage, availability and capability of the Unit to return to service after an Outage

scope and duration of the Instructed Operation.

(iii) Other Reporting Obligations. Each notice provided pursuant to Section 3.5(b)(i) and (b)(ii) that includes notice of an Outage or Instructed Operations shall include all such information concerning such Outage, change or limitation as PJM may require to be reported by Buyer or by Seller. Each such notice from Seller to Buyer shall be made by providing Notice in accordance with the Outage/Availability Notification Procedures set forth in Appendix 4. During the Services Term, Seller is responsible for providing to PJM notice of each

Outage to the extent required by Law, the PJM Tariff or other PJM Agreements or contracts. During the Services Term, each of Seller and Buyer shall promptly communicate to the other all information received by it from PJM or other Governmental Authority regarding planned or in-progress Outages or Instructed Operations. Seller is responsible for providing regulatory bodies such as FERC and the Commission with Outage information (for example but not limited to, NERC outage reporting requirements) as required by Law, Permit, tariff or regulation.

(iv) Buyer's Schedule. Commencing in the week prior to the expected Initial Delivery Date, as necessary for operations that commence no earlier than the Initial Delivery Date and thereafter throughout the Services Term, Buyer shall provide Seller once per week, a non-binding notice of expected Unit commitment over the course of the next week. Buyer shall schedule the delivery of Products in accordance with the Operational Limitations and in accordance with Section 3.6 of this Agreement (Standards of Care) and PJM operational protocols and provide notice of such schedule to Seller ("Buyer's Schedule").

(v) Seller's Operation. During the Services Term, Seller shall dispatch and operate each Unit as required to meet Buyer's Schedule except when and to the extent (A) a Unit designated to operate is incapable of operation due to an Outage (subject to the provisions for declaring and remedying Outages as set forth herein), (B) Buyer's Schedule is adjusted in accordance with Section 3.5(c), in which event Seller shall adhere to Buyer's Schedule as so adjusted, or (C) operation or dispatch is prevented by an Excused Event. During the Services Term, Seller shall not dispatch and operate the Unit(s) other than pursuant to Buyer's direction except as specifically contemplated herein.

(c) Other Scheduled Operations. Notwithstanding Buyer's exclusive rights to schedule and require delivery of the Products from the Unit(s) during the Services Term as set forth in Section 3.1(c), Buyer shall adjust Buyer's Schedule to the extent necessary to allow Seller to Start-Up, operate, curtail or Shut-Down the Unit(s) when required to permit Buyer to comply with an Instructed Operation.

(d) Deviation Charges. Buyer shall have no obligation or liability of any kind with respect to any uninstructed deviations. Should Seller fail to operate the Unit(s) in a manner to comply with Buyer's Schedule (unless due to Instructed Operations) and a deviation occurs between the quantity, time or location of Scheduled Energy and the Energy delivered or between the quantity, time or location of Ancillary Services scheduled and the Ancillary Services delivered ("Seller's Deviation"), Seller shall reimburse Buyer for any and all charges Buyer incurs as a result of Seller's Deviation, including charges imposed on Buyer with respect to the scheduling of the Unit(s), by PJM for Seller's uninstructed deviations as follows: Each month, Seller shall owe Buyer the sum (if positive) or Buyer shall owe Seller the sum (if negative) of (i) any and all charges assessed on Buyer for real-time or replacement Products that are incurred due to Seller's Deviation (i.e., under-generation), plus (ii) any and all charges, penalties or surcharges assessed on Buyer for Seller's Deviations, including any charges assessed on

Buyer for over or under generation (other than payments or charges covered by the preceding clause and charges assessed due to Buyer's scheduling error) and amounts assessed by PJM in the event that a Unit fails to meet the standards established by PJM for the provision of Ancillary Services, plus (iii) any and all amounts paid by Buyer to Seller for Products not delivered, less (iv) any and all payments made to Buyer by PJM for supplying Products in excess of the those delivered pursuant to Scheduled Operations (cumulatively "Deviation Charges"). Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI. **[Unit-Contingent:** Notwithstanding any provision of this Section 3.5(d) to the contrary, Seller shall not be obligated to compensate Buyer for any amount otherwise due under this Section 3.5(d) on account of the under-delivery of any Product caused by the full or partial unavailability of the Project due to a Forced Outage, Scheduled Maintenance Outage or Force Majeure Event; and the compensation rates in Article IV shall appropriately adjust for such unavailability of the Project.]

Scheduled Maintenance Outages and PJM Maintenance Outages.

(a) Seller's Scheduled Maintenance Outage and PJM Maintenance Outage Proposed Schedule. Seller shall notify Buyer of its proposed Scheduled Maintenance Outages for the Unit(s) by submitting to Buyer a completed Outage/Availability Notification Form (see Appendix 4) that fully accords with the requirements of Section 3.10(b) as follows:

(i) for the next calendar year, by no later than September 1 of each year during the Services Term; and

(ii) for each quarter, updating to the extent required the annual schedule previously Noticed, by no later than thirty (30) days prior to the commencement of each quarter; provided that Scheduled Maintenance lasting longer than five consecutive days may be taken only after a minimum of fifty (50) Business Days advance Notice prior to the month in which the Scheduled Maintenance will occur; Scheduled Maintenance lasting longer than two consecutive days but shorter than five days may be taken only after a minimum of thirty (30) Business Days advance Notice prior to the month in which the Scheduled Maintenance will occur; and Scheduled Maintenance lasting less than two days may be taken only after a minimum of fifteen (15) Business Days advance notice prior to the month in which the Scheduled Maintenance will occur.

(b) Scheduled Maintenance Outage Restrictions. Except as provided elsewhere in this Agreement, including, without limitation, Section 3.10(f) below:

(i) there shall be no Scheduled Maintenance during the Summer Months or the Winter Months;

(ii) Scheduled Maintenance Outages for any Unit, whether full or partial Scheduled Maintenance Outages, may not exceed [] hours total in any

consecutive twelve (12) month period; provided that Scheduled Maintenance Outages of up to [] hours total may be permitted within a consecutive twelve (12) month period when major maintenance overhauls are required; and

(iii) Seller may schedule only one major maintenance overhaul during a consecutive sixty (60) month period for any Unit.

(c) Buyer-Requested Changes to Maintenance Outage Schedule. At any time, Buyer may request that Seller change its Scheduled Maintenance Outage schedule. Seller shall notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer's proposed change is feasible and imposes no incremental costs (as compared to Seller's proposed schedule), or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request and shall communicate the changes to PJM and seek PJM approval for the revised schedule.

(d) PJM Approval of Outages. Seller is responsible for securing all PJM approvals and complying with all PJM requirements, as applicable, for all Scheduled Maintenance Outages and PJM Maintenance Outages, including securing changes in the proposed Scheduled Maintenance Outage and PJM Maintenance Outage schedules when PJM disapproves such schedules or cancels previously approved Scheduled Maintenance Outages or PJM Maintenance Outages. Seller shall submit the proposed Scheduled Maintenance Outages for the Unit(s) to PJM in a form approved by Seller, as modified in accordance with Section 3.10(c). Seller shall adhere to the Scheduled Maintenance Outage schedule approved by PJM.

(e) Schedule Changes. In the event that the Seller reasonably concludes the Unit(s) must be shut down to conduct maintenance that cannot be delayed until the next Scheduled Maintenance Outage established in accordance with Sections 3.10(a) through (d), Seller shall provide Buyer's Authorized Representative with a written request to change the Scheduled Maintenance Outage schedule, provided that a request shall not be made unless each of the following conditions are met: (a) Seller's Authorized Representative warrants that the maintenance cannot be delayed until the next Scheduled Maintenance Outage, (b) the Outage will not violate any Law, or any rule, regulation or requirement of PJM (including the PJM Tariff), NERC or the Commission, (c) the Seller delays the commencement of the Outage until the next Saturday and/or Sunday and (d) Seller completes the maintenance and provides Buyer with Notice that the Unit is again available for scheduling within the earlier of 48 hours after the maintenance begins or the hour ending 500 on the immediately following Monday, and (e) the requested maintenance is consistent with Good Utility Practices. Only with Buyer's written consent shall such change to the schedule be deemed to be a Scheduled Maintenance Outage.

(f) PJM Maintenance Outages. In the event Seller desires to take a Unit out of service in a manner that would be recognized by PJM as a PJM Maintenance Outage but

does not otherwise comport with the requirements to be a Scheduled Maintenance Outage as set forth in Sections 3.10(a) through 3.10(e), Seller shall notify Buyer of its proposed PJM Maintenance Outages for the Unit(s) by submitting to Buyer a completed Outage/Availability Notification Form (see Appendix 4) as promptly as possible upon determining the need for such maintenance. Seller shall then submit the proposed PJM Maintenance Outages for the Unit(s) to PJM in the form approved by Seller. Seller shall adhere to the PJM Maintenance Outage schedule approved by PJM. At any time, Buyer may request that Seller change its PJM Maintenance Outage schedule. Seller shall notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer's proposed change to Seller's PJM Maintenance Schedule is feasible and imposes no incremental costs (as compared to Seller's proposed schedule) or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request and communicate the change to PJM and seek PJM approval for the revised PJM Maintenance Outage schedule.

(g) Exclusions. Any Outage taken pursuant to Section 3.10(f) that does not also meet the requirements set forth in Sections 3.10(a) through (e) above for a Scheduled Maintenance Outage, and any Outage taken outside of or in excess of the times permitted for Scheduled Maintenance Outages or not otherwise in accordance with this Section 3.10(a) through (e), shall be treated as Forced Outages and the Unit(s) will be deemed to be unavailable during such periods for purposes of determining the Equivalent Availability Factor.

Operations Logs and Access Rights.

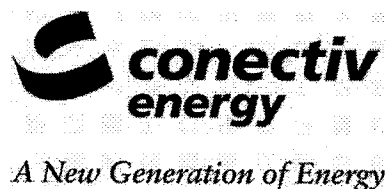
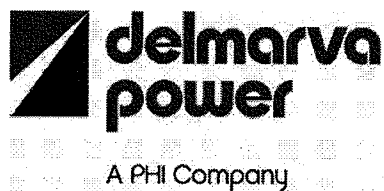
(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations of the Unit(s) and the Project on a daily basis. Such log shall include, but not be limited to, information on power production, Fuel consumption, efficiency, availability, maintenance performed, Outages, electrical characteristics of the generators and similar information relating to the availability, testing and operation of the Unit(s) and availability and production of the Products. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project and the Unit(s) at any time upon reasonable notice and for any purposes reasonably connected with this Agreement, including verification of the Unit's(s') availability or unavailability and to monitor construction of the Project and the Unit(s).

(b) Calculation of Equivalent Availability Factor. Each month Seller shall calculate the Equivalent Availability Factor of each Unit, subject to audit by Buyer. Subject to Operating Procedures developed pursuant to Section 3.13, if Seller identifies a Unit as unavailable due to an Outage (e.g., including in a Scheduled Availability Notice

or pursuant to an Outage/Availability Notification Form) for any hour, the Unit shall be deemed unavailable for that hour for purposes of the Equivalent Availability Factor calculation, provided that if Seller provides a revised notice indicating the Unit is available for an hour in which it was previously deemed unavailable due to an Outage at least thirty (30) minutes prior to the earlier of the time the Buyer is required to schedule or bid the Unit in PJM's day-ahead energy market, the Unit will not be deemed to be unavailable due to an Outage for such hour for purposes of determining the Equivalent Availability Factor; and if Seller provides a revised notice indicating the Unit is available for an hour in which it was previously deemed unavailable due to an Outage at least 30 minutes prior to the earlier of the time the Seller shall schedule or bid the Unit in PJM's hour-ahead energy market, then if the Unit is dispatched in PJM's hour-ahead energy market, all of the available Capacity of the Unit will be deemed to be available for such hour for purposes of determining the Equivalent Availability Factor.

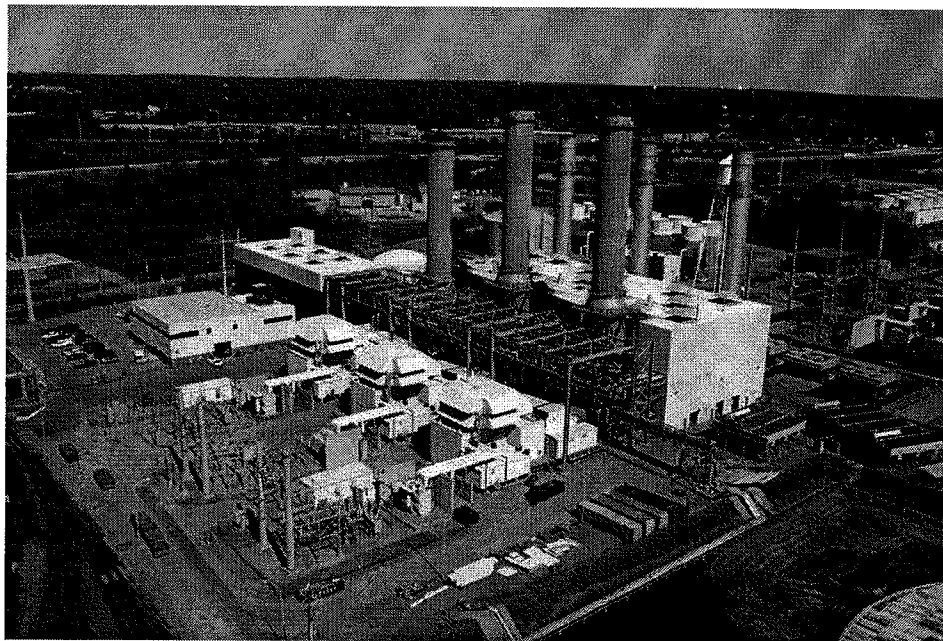
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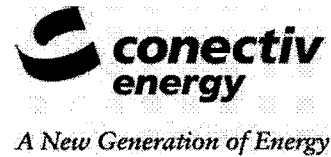
Proposal Q&A Response to:

Delmarva Power ***Delaware Public Service Commission***
ICF International ***New Energy Opportunities***

**In Response to DPL's transmittal dated December 29, 2006 on
Conectiv Energy's Proposal Submittal
for New Generation Resources**



**Submitted electronically by:
Conectiv Energy Supply, Inc.
January 4th, 2007**



January 4, 2007

Mr. Mark Finfrock
Delmarva Power & Light
800 King Street
Wilmington, DE 19801

Sent by e-mail to Mark.finfrock@pepcoholdings.com, Dpl.rfp@icfi.com,
Robert.howatt@state.de.us, and bjs@newenergyopps.com

Dear Mr. Finfrock:

I am pleased to enclose Conectiv Energy Supply, Inc.'s ("CESI's) Response to Questions Dated December 29, 2006 (the "Response"). While most of the questions sought relatively simple clarifications to CESI's December 21, 2006 proposal to provide New Generation ("Proposal"), several revealed either a potential misunderstanding of the Proposal or a possibility that CESI might be considered to be unresponsive to the RFP in one or more respects. In light of the above, CESI wishes to highlight the following with respect to the enclosed:

1. The required pro forma was inadvertently not attached to the Proposal. As indicated in CESI's response to Question No. 23, the pro forma has been attached to the Response as Attachment VIII.
2. CESI does not intend for there to be a maximum annual capacity factor of 55 percent. As indicated in response to Question No. 13, CESI intends to obtain permits which provide Delmarva the maximum possible flexibility for dispatch of the Unit. CESI anticipates that Delmarva will choose lesser cost options during most off-peak hours and, therefore, used a nominal [REDACTED] percent capacity factor to reflect an estimate of Delmarva's projected use of the Project.
3. As indicated in response to Question No. 36, red-lined changes to the standard form of the PPA for the Base Offer and the Alternative Offer are provided as Attachments X and XI to the Response.
4. CESI continues to suspect that a lien on the Project provides a level of security to Delmarva which constitutes an unnecessary "belt and suspenders." However, we have indicated in our response to Question No. 37 that CESI will provide the requested lien if the Parties agree that the collateral requirements of Sections 8.1 and 8.2 of the PPA do not provide adequate security to Delmarva.

P.O. Box 6066
Newark, DE 19714-6066

Mr. Mark Finfrock
January 4, 2007
Page 2 of 2

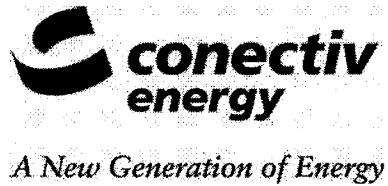
5. While CEST's Proposal used sample output numbers of 152 MW and 177 MW for the Base and Peak periods of operation, as indicated in response to Item 7 of Question 32 and elsewhere in the Response, the actual output will vary depending upon ambient temperatures.

If you have any additional questions with regard to the Proposal or this Response to Questions please feel free to contact Richard Purcell at (302) 451-5512 or rich.purcell@conectiv.com

Sincerely,

A handwritten signature in black ink, appearing to read 'Arturo E. Agra', written over a grid background.

Arturo E. Agra
Vice-President
Conectiv Energy



Proposal Q&A Response to:

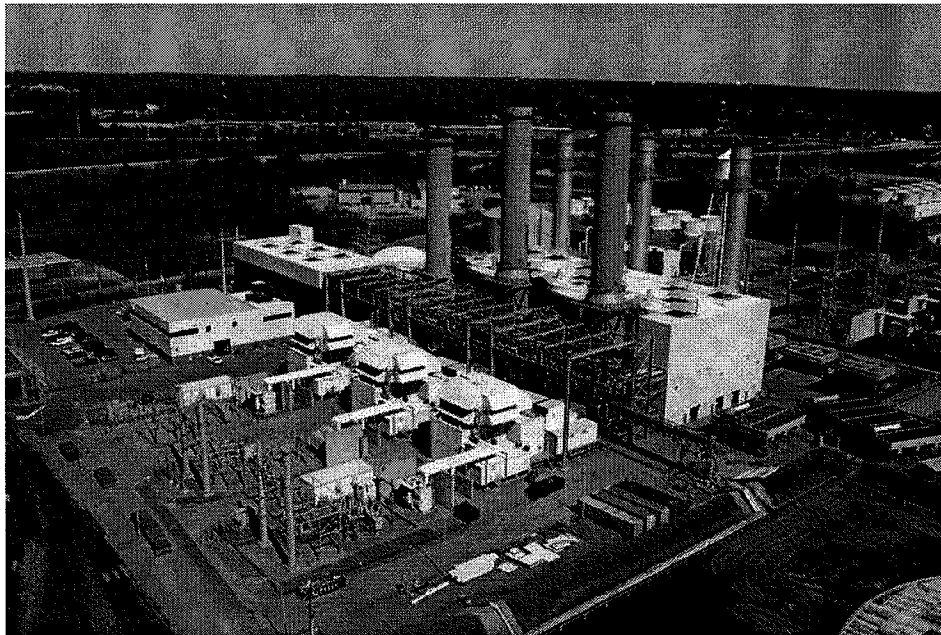
Delmarva Power

Delaware Public Service Commission

ICF International

New Energy Opportunities

**In Response to DPL's transmittal dated December 29, 2006 on
Conectiv Energy's Proposal Submittal
for New Generation Resources**



**Submitted electronically by:
Conectiv Energy Supply, Inc.
January 4th, 2007**



A PHI Company

December 29, 2006

Richard Purcell
Conectiv Energy
500 N. Wakefield Drive
Newark, DE 19702

Sent by e-mail to rich.purcell@conectiv.com and krish.raju@conectiv.com

Dear Mr. Purcell:

Thank you for the proposal that you recently submitted to provide capacity and energy to Delmarva Power & Light (Delmarva). With this letter, Delmarva requests your response to a number of questions detailed in the attachment that will assist in the consideration of your proposal. These questions are based on the reviews to date of your proposal by Delmarva, the public agencies in Delaware, and our consultants. Please provide your response to these questions on or before Thursday, January 4, 2007. Please send your responses electronically to:

Mark Finfrock
Delmarva Power & Light
Mark.finfrock@pepcoholdings.com

Robert Howatt
Delaware Public Service Commission
Robert.howatt@state.de.us

ICF International
Dpl_rfp@icfi.com

Barry Sheingold
New Energy Opportunities
bjs@newenergyopps.com

Best wishes for the holidays, and thank you for your cooperation in this matter.

Sincerely,

Mark Finfrock
Delmarva Power & Light

Cc: Anthony Wilson, Associate General Counsel
PHI - Delmarva

QUESTIONS FOR CONECTIV – December 29, 2006

1	Cover Letter, P. 3	<p>Conectiv indicates that it is offering an option for a five-year extension of the PPA that is available in years five through eight (for both the Base Offer and the Alternative Offer).</p> <ol style="list-style-type: none"> 1. Is this a firm option that is offered to Delmarva as part of your proposal, which may be exercised in contract years 5-8? If so, what are the applicable prices? Are the PPA terms and conditions the same as for the proposed 10-year term? 2. If this is not a firm option, please state the terms and conditions applicable to your proposal.
2	Form C, Summary and Form D, Q. 3, Forms E & F	Please explain why the net summer dependable rating is higher than the net winter dependable rating. Please explain why estimated UCAP is the same as the net summer dependable rating, despite an expected 2.5% annual forced outage rate. If the information provided is not correct, please provide corrected information.
3	Form D, Q. 6	Please provide additional information on performance guarantees. Conectiv indicates that such guarantees “will be provided.” Also, please clarify how the target equivalent availability factor would be determined under Conectiv’s Alternate Proposal.
4	Form D, Facility	Please explain the incremental heat rate provided at 100% loading and how this value differs from the average heat rate at the same loading.
5	Form D, Facility	Please provide the anticipated efficiency performance adjustment expected at local ambient conditions rather than ISO conditions.
6	Form F	Please identify whether the amount of “dispatchable capacity” would change if Delmarva exercises the option to extend the PPA contract to 15 years.
7	Form G, Q. 7	Please provide specifics of the intended fuel transportation arrangements for this project, in addition to the general Conectiv experience described.
8	Form G, Q. 9	Please provide more detail on pipeline transportation costs for gas delivered to this project, as opposed to Conectiv’s reference to general pricing information available from the pipeline’s web sites.
9	Form G, Q. 10	Please provide more detail on the intended sources of gas supply for this project in particular, and describe how these sources relate to the pricing offered for this project. Delmarva understands that Conectiv has relationships with and has purchased fuel in the past from TETCO, Transco and Columbia Gas. Also, please describe how Conectiv’s plan for gas supply would vary under the Alternate Proposal.
10	Form G, Q. 11	Please provide more information on the intended arrangements for gas supply, given that Conectiv will use an “appropriate portfolio.”
11	Form G, Q. 17	Please provide more information on the intended fuel supply strategy and criteria for this project to supplement the information

		provided on Conectiv's past experience.
12	Form G, Q. 24	Please explain why there would be no guaranteed minimum pressure.
13	Form H, Environmental Impact – Air Emissions	Please confirm that the maximum annual dispatch (capacity factor) anticipated is 55 percent based on air permit requirements. If there is a seasonal variation in anticipated operating potential, please provide the seasonal dispatch potential as well.
14	Form I, Q. 3	The RFP requires that a "reasonable schedule for acquisition of all permits" be provided. Please provide such a permit-by-permit schedule for filing and receiving permits.
15	Form I, Q. 4	Conectiv indicates that environmental assessments are required for the Delaware Coastal Zone Program and New Castle County. Please identify any approvals or permits required from a federal agency that will trigger compliance with the National Environmental Policy Act. If there is a federal NEPA requirement, please identify whether the level of required analysis is expected to be an environmental assessment or an environmental impact statement.
16	Form I, Q. 5	Please provide more details on Conectiv's plans to obtain cooling tower makeup/condenser water from the hot-side of EMPP's existing cooling water discharge canal. On an average daily basis, please identify how much cooling water is currently withdrawn from and subsequently discharged back into the Delaware River to meet current needs, and explain how these daily figures would be modified by the proposal? Also, please indicate the expected change or improvement over the current discharge temperature.
17	Form I, Q. 7	As also requested in Form D, Q. 6 above, please provide more information on performance guarantees
18	Form J, Q. 2	Please provide more information on the specific approach that Conectiv would take to off-site hazardous waste transportation for this project.
19	Form K, Q. 3	The proposed site is near the Delaware River. Please identify whether it is located within either a 100-year or 500-year floodplain. If so, please provide the elevations and discuss the amount of any fill that may be required for flood proofing purposes.
20	Form K, Q. 4	Please provide the site surveys mentioned that show no impact on threatened and endangered species, as well as how determinations were made with regard to wetlands and cultural resources.
21	Form L, Q. 9, Attachment 1	The question requests a map showing the anticipated placement of all facilities at the site of the project. Conectiv is requested to provide a plot plan that identifies "any necessary rights-of-way, size, fuel supply route, fuel storage, cooling source, waste disposal, interconnection point, etc." Please identify all key facilities on the map provided or provide another map that does so.
22	Form L, Q.10 Attachment	The schedule shows licensing starting in March 2007 and engineering in April 2007. Please identify the latest date by which approval could be obtained and still enable the plant to be

		on line by June 2011.
23	Form O, Q. 21	Please provide a pro forma for the project, in Excel, with formulas. Conectiv's response indicates that a pro forma was attached, but one was not provided.
24	Form R, Pricing	Please confirm the location for the Gas Daily price used in the energy pricing formulas (e.g. Henry Hub).
25	Form R, Pricing	Please indicate whether or not the Peak Segment Dispatch price includes dispatch requests in the day-ahead and real-time markets. Please confirm this for both the Base and Alternate Bids proposed.
26	Form R, Pricing	Please confirm that the Energy Price for Off-peak Dispatch or Dispatch initiated after 4:30 pm in Base Mode applies to any real-time dispatch request as well as off-peak day ahead dispatch requests. Please confirm this for both the Base and Alternate Bids proposed.
27	Form R, Pricing	<p>Conectiv has proposed adjusting stated capacity and energy payments using a formula based on the percentage change in the "60 Month Average HH NYMEX Closing Price" from December 20, 2006 to the date after PPA execution and regulatory approvals.</p> <ol style="list-style-type: none"> 1. Please indicate how the "60 Month Average HH NYMEX Closing Price" is determined. Provide an illustrative example using the December 20, 2006 date. 2. Please describe the rationale for using a 5 year (60 month) term in the calculation. 3. Please identify a source from which the data for the "60 Month Average HH NYMEX Closing Price" can be obtained. If the data is not publicly available, please provide a historical series of the data as of the <i>third Wednesday</i> of each month over the past 5 to 10 years. 4. If the "60 Month Average HH NYMEX Closing Price" relies on monthly NYMEX futures price quotes for Henry Hub, please indicate on how the liquidity of the series, particularly for points greater than 2-3 years out, will be accounted for in the calculation. Given a decline in the liquidity of the extended series after 2-3 years, please explain the appropriateness of relying on a 5 year period. 5. Please indicate what Conectiv's proposed treatment of missing or not available data is should HH NYMEX price quotes not be available for the "60 Month Average HH NYMEX Closing Price". 6. Please describe in detail what is meant by the term "date after execution and all regulatory approvals are received for the contract". List applicable regulatory approvals and whether said approvals need to be beyond the point of appeal.
28	Form R, Pricing	<p>For the Base Mode of operation during on-peak hours, is the Energy Price after contract year 1, escalated based on (a) or (b) or (c) below as the base price (that is being adjusted):</p> <ul style="list-style-type: none"> • The 2012 energy price in Table 1, adjusted according to

		<p>the one-time adjustment for natural gas forward prices (HH), for each year;</p> <ul style="list-style-type: none"> • The energy price in Table 1 for the applicable year; or • Neither (please specify the correct method). <p>Provide a specific example showing how energy prices will be escalated and a written description of the methodology.</p>
29	Form R, Pricing	Please confirm whether minimum run blocks (time of capacity) would apply in the Alternate proposal and if so, describe the minimums required.
30	Form R, Pricing	Please provide a 5 year history for all indices used in the pricing formulas
31	Form R, Table 1	<p>PPA pricing in Conectiv's proposal shows energy prices escalating at 2.5% per year. It then describes a price adjustment for the output in Base Mode – peak hours, and prices for the output in Base Mode – off-peak hours for Peak Mode output. Base Mode is defined as output up to 152 MW and Peak Mode is defined as output of 152 to 177 MW.</p> <ul style="list-style-type: none"> ▪ Is the described adjustment made to the fixed but escalated amounts in Table 1? ▪ The adjusted energy price for the Base Mode – peak hours time period equals the energy price in Table 1 adjusted for changes in the NYMEX Henry Hub monthly average prices. After year one, the energy price escalates 50% at a Coal Broker's Index and 50% at GDP. Why did Conectiv choose these escalators for energy price adjustments for the energy price for a plant that burns natural gas?
32	Form R, Base Offer	<ol style="list-style-type: none"> 1. Please describe why the proposed price index using NYMEX Henry Hub gas prices is an acceptable method for calculating capacity prices. 2. Please describe how the proposed price index using NYMEX Henry Hub gas prices is associated with the cost of constructing or operating new generation capacity? 3. What is the Target Equivalent Availability Factor (guaranteed equivalent availability factor as defined in the standard form PPA)? 4. Please specify the ancillary services that the Facility is capable of providing and the level of availability for each product, including applicable operating limits. 5. Please provide specific formulas for the computation of the energy price for the base mode of operation. 6. Please confirm that the base period of operation is for weekdays from 8 a.m. through 11 p.m., excluding NERC holidays. 7. Please confirm that Delmarva has dispatch rights to the energy during the base period of operation for up to 152 MW, subject to day-ahead notice and an eight-hour minimum run time. If this is not correct, please specify Delmarva's rights

		<p>and obligations regarding this block of energy.</p> <p>8. Please specify what natural gas index would be used from Gas Daily and how specifically the Energy Price would be derived, with the exception of VOM. Is the Gas Daily price a delivered price?</p>
33	Form R, Alternate Offer	<p>1. Please specify any differences between your Base Offer and your Alternative Offer other than:</p> <ul style="list-style-type: none"> i. Capacity price set forth in Table 1; ii. Rights to dispatch (Delmarva for the Base offer and Conectiv for the Alternative Offer) iii. Conectiv's right to deliver energy from a source other than the units. iv. The obligation to provide energy is on a firm basis. <p>2. Is the obligation to provide a specific amount of UCAP firm? If so, what is the amount of UCAP?</p> <p>3. Is your proposal to be paid the capacity price for the amount of UCAP or the amount of summer net capability? If the latter, what would be the Target Equivalent Availability Factor and how would the availability adjustment mechanism work?</p> <p>4. What are the potential points of delivery at which Seller may sell energy to Delmarva?</p> <p>5. Regarding exception #1: What do you mean by "Buyer shall be permitted to direct Seller to deliver Energy from any source to the Delmarva Zone based on a Base Mode of operation of the Unit (i.e., at 152 MW) or a Peak Mode of operation of the Unit (i.e., 177 MW)"?</p> <p>6. Is it the Buyer's option to purchase energy for each of the following, subject to the constraints identified regarding notice and minimum run time: base mode of operation (day ahead), off-peak dispatch or base mode dispatch initiated after 4:30 pm the day before, or peak segment?</p>
34	Form O, General	<p>Please provide an Excel spreadsheet showing annually for each year in the contract the following information (for the Base Offer and Alternative Offer):</p> <ul style="list-style-type: none"> • Expected capacity payments based on the Target Equivalent Availability Factor (or other specified basis) and the assumed changes in the assumed escalator(s) (e.g., NYMEX Henry Hub monthly average prices); • Energy sold by Conectiv to DPL during (a) the Base Mode – peak hours, (b) the Base Mode – off-peak hours,

		<p>and (c) Peak Mode operations.</p> <ul style="list-style-type: none"> • The annual energy price for each of the above periods using Conectiv's proposed price formulae. Provide all underlying assumptions and calculations.
35	PPA / Pricing	Please describe in detail the ancillary services to be provided by the facility.
36	PPA	Please provide your requested changes to the standard form of Power Purchase Agreement (PPA) for the Base Offer and Alternative Offer in the form of a redlined version of the PPA in MS Word format, as requested in Section 2.3.9 of the RFP Instructions to Bidders.
37	PPA	Please explain why Conectiv should not be required to provide a second lien in addition to the collateral requirements set forth in Sections 8.1 and 8.2 of the standard PPA, or kindly withdraw Conectiv's exception.



A New Generation of Energy

**DELMARVA POWER RFP
FOR NEW GENERATION RESOURCES**

**CONNECTIV ENERGY SUPPLY, INC. RESPONSE
TO QUESTIONS DATED DECEMBER 29, 2006**

JANUARY 4, 2007

QUESTION 1

Conectiv indicates that it is offering an option for a five-year extension of the PPA that is available in years five through eight (for both the Base Offer and the Alternative Offer).

- 1. Is this a firm option that is offered to Delmarva as part of your proposal, which may be exercised in contract years 5-8? If so, what are the applicable prices? Are the PPA terms and conditions the same as for the proposed 10-year term?*
- 2. If this is not a firm option, please state the terms and conditions applicable to your proposal.*

This is a firm offer to extend the PPA for both proposals that can be exercised at DP&L's sole option on any contract anniversary date during the interval of years 5 through 8 of the original PPA term ("Extension Date"). The pricing for the 5 year extension for both capacity and energy will be recalculated at the time the extension option is exercised [REDACTED]

[REDACTED] All other terms of the PPA will be the same for the extended term as for the original 10 year term.

[REDACTED]

[REDACTED]

[REDACTED]

For years 12 through 15, the capacity price will be fixed and the energy price will be escalated in the same manner as in the original 10 year contract.

QUESTION 2

Please explain why the net summer dependable rating is higher than the net winter dependable rating. Please explain why estimated UCAP is the same as the net summer dependable rating, despite an expected 2.5% annual forced outage rate. If the information provided is not correct, please provide corrected information.

Summer Dependable Rating vs. Winter Dependable Rating

The Combustion Turbine selected for use in this proposed project has multiple power augmentation options that have been optimized by Conectiv Energy's Engineering group working independently and with Original Equipment Manufacturer (OEM) representatives. With over 13 years of direct experience, Conectiv Energy has the ability to confidently predict unit performance.

The Capacity values included in the Response for Proposal were developed using GateCycle Thermal Performance modeling based on an existing combustion turbine in operation at a Conectiv generating facility. In both summer and winter modes, the limiting factor is the Combustion Turbine Generator mechanical shaft limit of [REDACTED]

During summer operation, the unit capacity is achieved utilizing the following available power augmentation systems:

- [REDACTED] - allows for higher combustion temperatures
- [REDACTED] - mists demineralized water into the inlet of the compressor, reducing the amount of work required to compress combustion air
- [REDACTED] - increases the firing temperature and injects demineralized water directly into the combustion chamber.

During the winter operating mode (at 25°F), maximum power generation is achieved in the Peak operating mode only. At intermediate temperatures, [REDACTED] will be used as required to achieve the maximum capacity ratings.

For each season, the gross power contributed from the Combustion Turbine to the station gross power is nominally [REDACTED] with the balance of the power being provided from the steam cycle. The incremental increase in summer dependable rating verses the winter dependable rating results from the increased energy (mass flow + heat) exhausted from the Combustion Turbine, converted to steam energy in the HRSG, and subsequently to mechanical energy in the Steam Turbine. [REDACTED]

UCAP is same for Net Dependable Capacity in Summer with 2.5% Annual Forced Outage Rate

Form E submitted in the application does not comply with the PJM market rule values and has been revised accordingly. The Revised Form E is provided as Attachment I to this response.

QUESTION 3

Please provide additional information on performance guarantees. Conectiv indicates that such guarantees “will be provided.” Also, please clarify how the target equivalent availability factor would be determined under Conectiv’s Alternate Proposal.

The Performance guarantees for the base proposal are as follows:

- Forced Outage Rate: 2.5%
- Equivalent Availability Factor: [REDACTED]
- Capacity Factor: As dispatched
- UCAP (Winter): 170.6 MW
- UCAP (Summer): 172.6 MW
- Dependable Capacity Rating (Summer): 175 MW
- Dependable Capacity Rating (Winter): 177 MW

The Performance guarantees for the alternate proposal are as follows:

- Forced Outage Rate (Capacity Only) 2.5%
- Equivalent Availability Factor: 100%
- Capacity Factor: As dispatched
- UCAP (Winter): 170.6 MW
- UCAP (Summer): 172.6 MW
- Dependable Capacity Rating (Summer): 175 MW
- Dependable Capacity Rating (Winter): 177 MW

Note that since energy would be able to be provided from [REDACTED] a 100% EAF could be achieved.

QUESTION 4

Please explain the incremental heat rate provided at 100% loading and how this value differs from the average heat rate at the same loading.

Average Heat Rate and Incremental Heat Rate have distinctive definitions. For the data presented on Form D, the average and incremental heat rates are provided at iso-conditions at 59°F. The following table is provided for use in the example provided:

Net Capacity (%)	Heat Input (mmBtu)	Net Station Output (kw)	Heat Rate (btu/kWh)	Incremental Heat Rate (btu/kWh)
0	██████	0	0	0
68	██████	██████	7,988	5,560
86	██████	██████	7,637	6,282
100	██████	██████	7,691	8,023

Average Heat Rate is defined by the total heat input in btu divided by the net station output in kWh and is defined by the unit btu/kWh. For example, at 100% of the net capability, the total heat input is ██████ mmBtu and the net station output is ██████ kW for a average station heat rate of 7691 btu/kWh.

The Incremental Heat Rate is defined by the incremental btu increase to achieve the next load divided by the incremental increase in net station output. The following example is provided for the dispatch from 86% to 100% of the net capacity:

$$\begin{aligned} \text{Heat Input Difference} &= \text{Heat Input at 100\%} - \text{Heat Input at 86\%} \\ &= \text{██████} \\ &= \text{██████} \end{aligned}$$

$$\begin{aligned} \text{Net Station Output Difference} &= \text{Net Sta Output at 100\%} - \text{Net Sta Output at 86\%} \\ &= \text{██████} \\ &= \text{██████ kWh} \end{aligned}$$

$$\begin{aligned} \text{Incremental Heat Rate} &= (\text{Heat Input Difference (mmBtu)} \times 1,000,000) / \text{Net Sta Output Diff} \\ &= \text{██████} \times 1,000,000 / \text{██████} \\ &= 8021* \end{aligned}$$

* The Form D values included additional significant digits not included in this example.

QUESTION 5

Please provide the anticipated efficiency performance adjustment expected at local ambient conditions rather than ISO conditions.

The curve provided shows the calculated heat rate (efficiency) and the expected output as a percentage of rated load from 25° to 92°F. The solid lines shows the Base dispatch curves and the hashed lines show the energy (kWh) and corresponding heat rate (btu/kWh) for the peak energy segments.



QUESTION 6

Please identify whether the amount of “dispatchable capacity” would change if Delmarva exercises the option to extend the PPA contract to 15 years.

Exercising the option to extend the contract term to 15 years will not impact the “dispatchable capacity” in years 11 through 15.

QUESTION 7

Please provide specifics of the intended fuel transportation arrangements for this project, in addition to the general Conectiv experience described.

The explanation of CESI’s supply and transportation arrangements was not provided simply to show CESI’s experience in this area. It is critical to understand that CESI uses its existing supply and transportation arrangements on a portfolio basis to meet the changing needs of its entire fleet of gas fired generating units. CESI will add, or subtract, arrangements to and from the portfolio based upon the overall needs of the fleet at any specific time. This approach permits CESI to use all of its arrangements on an economically efficient basis to meet the overall

requirements of its fleet. CESI intends to add the Project to the existing fleet of gas generation and to meet its needs with the portfolio of resources. The fact is that some or all of the transportation or supply arrangement needed to meet the needs of the Project [REDACTED]

[REDACTED] As described in the answer to Form G, Q. 7, CESI's existing portfolio includes firm gas transport and storage to service. These contracts are with multiple interstate gas pipelines and storage holders that provide a guaranteed path from the [REDACTED]

[REDACTED] CESI also has NAESB agreements in place with gas suppliers that provide the contractual arrangements for firm gas delivery into the interstate pipelines and/or storage facilities as well as the ability to buy firm delivered gas to the Hay Road site. The appropriate agreements are in place to manage the financial risk of gas transport, basis and supply by using the available financial instruments. Accordingly, CESI has the ability to source gas on multiple pipelines from multiple locations across [REDACTED] United States from multiple suppliers. [REDACTED]

Typical agreements including interstate gas transportation, a firm gas storage, and CESI's NAESB contract for gas suppliers are provided as Attachment II, III, and IV respectively.

[REDACTED]

QUESTION 8

Please provide more detail on pipeline transportation costs for gas delivered to this project, as opposed to Conectiv's reference to general pricing information available from the pipeline's web sites.

[REDACTED]

[REDACTED]

QUESTION 9

Please provide more detail on the intended sources of gas supply for this project in particular, and describe how these sources relate to the pricing offered for this project. Delmarva understands that Conectiv has relationships with and has purchased fuel in the past from TETCO, Transco and Columbia Gas. Also, please describe how Conectiv's plan for gas supply would vary under the Alternate Proposal.

Once the final award is in place to build Hay Road Units 9 & 10, CESI will decide if any changes to our gas supply portfolio are needed to support the expected requirements of the new unit.

For additional detail on intended gas supply sources for this project, please see the supplemental responses in for Questions 7 and 8.

The pricing of the PPA is the result of CESI's analysis of all expected costs to deliver fuel to the project. [REDACTED]

The plan for gas supply for the Alternate Proposal would not differ from the plan for gas supply of the Base Offer.

QUESTION 10

Please provide more information on the intended arrangements for gas supply, given that Conectiv will use an "appropriate portfolio."

Please refer to responses to Question 7 to Question 9 above.

QUESTION 11

Please provide more information on the intended fuel supply strategy and criteria for this project to supplement the information provided on Conectiv's past experience.

Please refer to responses to Question 7 to Question 9 above.

QUESTION 12

Please explain why there would be no guaranteed minimum pressure.

Except for periods of interstate pipeline maintenance or under Force Majeure conditions, the minimum operating pressure at any of the three interstate pipeline gate stations serving Hay Road is [REDACTED] psig. This number, as stated in the proposal, is standard operation and not guaranteed contractually.

For clarification, interstate gas pipelines are engineered to meet the contractual daily and hourly gas needs of all the customers on that interstate pipeline's system on a design day. Such contractual obligations are certified by FERC. Additionally, as the entire gas interstate system is an interconnected infrastructure of dozens of pipelines, interstate pressures are typically over [REDACTED] psig at any point along any interstate pipeline.

[REDACTED]

QUESTION 13

Please confirm that the maximum annual dispatch (capacity factor) anticipated is percent based on air permit requirements. If there is a seasonal variation in anticipated operating potential, please provide the seasonal dispatch potential as well.

Conectiv Energy plans to secure air permitting approval for the proposed facility and to provide the necessary NOx emission offsets in a manner that ensures flexible operating capability. The forecasted annual dispatch or capacity factor for the project facility would be 60% assuming that Delmarva Power elects to run the unit during every on-peak hour in each year. Under the base arrangement it is predicted that, for non-peak periods, lower costs alternatives would be available. This rationale is predicated on the fact that DPL would optimize the value of this offer and cycle the units to ensure the maximum value for its customers.

[REDACTED]

This strategy, which applied Conectiv Energy's generation market experience optimizing the plant design, permitting constraints, pricing, and configuration facilitates Delmarva Power's ability to provide the lowest energy and capacity cost attainable. [REDACTED]

[REDACTED]

[REDACTED]

QUESTION 14

The RFP requires that a "reasonable schedule for acquisition of all permits" be provided. Please provide such a permit-by-permit schedule for filing and receiving permits.

The requested schedule is provided as Attachment V of this document.

QUESTION 15

Conectiv indicates that environmental assessments are required for the Delaware Coastal Zone Program and New Castle County. Please identify any approvals or permits required from a federal agency that will trigger compliance with the National Environmental Policy Act. If there is a federal NEPA requirement, please identify whether the level of required analysis is expected to be an environmental assessment or an environmental impact statement.

The U.S. Environmental Protection Agency (EPA) has issued primacy over most of its federal permit programs to the State of Delaware, which incorporates EPA's NEPA requirements in their state regulations. No major federal permits will be required for this project, and no federal funds will be used. As a result, no federal NEPA requirement such as an EA or EIS will be required.

QUESTION 16

Please provide more details on Conectiv's plans to obtain cooling tower makeup/condenser water from the hot-side of EMPP's existing cooling water discharge canal. On an average daily basis, please identify how much cooling water is currently withdrawn from and subsequently discharged back into the Delaware River to meet current needs, and explain how these daily figures would be modified by the proposal? Also, please indicate the expected change or improvement over the current discharge temperature.

Cooling Tower Make Up / Blow Down from Canal

The Hay Road No. 4 and No. 8 Steam Turbine Generators' exhaust steam is cooled via two independent closed cooling systems, with each having a dedicated 10-cell mechanical draft cooling tower. The Edge Moor Power Plant (EMPP) that is adjacent to the Hay Road Power Complex (HRPC) utilizes once through cooling for its steam condensers on EMPP Units 3, 4, and 5. Discharge from each condenser to the Delaware River is via a common discharge canal.

During the initial Hay Road expansion project completed in 1993 (Hay Road 4) and the subsequent expansion in 2002 (Hay Road 5 – 8), the cooling water needs for these facilities were designed to be met from river water drawn from the "hot side" of the EMPP discharge canal. This design was implemented to reuse the thermal effluent that was already permitted and negated the need to withdraw additional cooling water from the Delaware River. In addition, the project could operate within the existing permit limits for discharge canal. (Outfall 001).

The "hot" outlet water from the down steam side of the Edge Moor condensers is pumped using three 100% pumps rated at [REDACTED] GPM each to the HRPC facilities via a make-up water pump house installed along the discharge canal. Make-up water to the HRPC cooling towers is delivered via a common [REDACTED] pipe that has [REDACTED] laterals installed to each Cooling Tower. Blow down from the HRPC units is via [REDACTED] discharge lines installed down stream of the circulating water pumps on each tower.

Cooling Water Needs

HRPC operates as a merchant plant, and has life time capacity factor of less than [REDACTED]. Therefore, reporting the average daily withdrawal and discharge values would skew the response. Alternatively, the following projections are offered.

The river water make up needs to each existing cooling tower and the proposed cooling tower is directly related to the ambient conditions, heat load on the system, and the number of concentration cycles. Generally, withdrawal, evaporation, and blow down rates for each tower, assuming [REDACTED] hours of operation, are referenced to be 3.3 MGD, 2.4 MGD, and 0.90 MGD, respectively. All of the non-contact cooling water withdrawn from the canal is returned to the Delaware River via the EMPP discharge canal or evaporated in the atmosphere. It is not common to run [REDACTED] and actual withdrawal conditions are expected to be lower.

For the proposed project, make up rates are expected to range from 800 GPM to 1350 GPM, and evaporation rates would be 600 GPM to 800 GPM. For a [REDACTED] the daily rates for withdrawal, evaporation, and blow down would typically be 1.1 MGD, 0.8 MGD, and 0.3 MGD respectively.

At this time, with the existing excess pump and system capacities available for this project, the existing infrastructure is planned on being utilized. Note that all consumptive uses will be permitted, and the proper allocations will be aligned to meet all DRBC requirements, including satisfying drought mitigation requirements for the Delaware River.

River Water Temperature

The response in Section I references the reduction in discharge temperature reduction in the discharge canal. The proper descriptions should be a reduction in the heat rejected to the river because the cooling tower removes more heat from the discharge canal than it returns in the blow down stream. For winter and summer operation, the total heat rejected to the river from the canal, based on studies performed during permitting of the Hay Road 5 – 8 project, was reduced by a range of [REDACTED] (summer) to [REDACTED] (winter). With all units in operation, and including this project, extrapolating these values would show that the total heat rejected to the river would be reduced by [REDACTED] (winter) to [REDACTED] (summer). The actual values will be verified through modeling as part of the permitting efforts.

QUESTION 17

As also requested in Form D, Q. 6 above, please provide more information on performance guarantees

Primary control equipment to be in place will incorporate the Siemens-Westinghouse silo combustors which limits NOx, VOC, and CO emissions. In addition, the heat recovery steam generators will include SCR technology and utilize catalyst in conjunction with Anhydrous Ammonia. With the current low emission levels of the combustion turbines, CO levels of 9 ppm or less can be achieved at all operating loads without the use of catalyst.

The combustion turbines are same vintage and designs as the nine (9) units installed and commissioned at Hay Road and Bethlehem in 2002 and 2003. All nine (9) units were tested and achieved the emission guarantees provided by Siemens-Westinghouse. Forecasted combustion turbine emission rates will be guaranteed by Conectiv Energy to the HRSG vendor who will subsequently guarantee final emission performance with the design of the SCR system.

Final contract terms are not in place at this time with the HRSG vendor. Final terms and conditions will include the obligations established in the Air Permit and have financial and liquidated damages associated with emission performance. As indicated previously, nine (9) HRSG's were also installed in 2002 and 2003 and for each case, including ammonia slip, performance guarantees were achieved.

QUESTION 18

Please provide more information on the specific approach that Conectiv would take to off-site hazardous waste transportation for this project.

As a PHI company, Conectiv works from a list of qualified PHI-approved hazardous waste contractors. Based on the type of waste, Conectiv would contact the appropriate PHI-approved contractor, and ensure via manifests that the waste is delivered to a PHI-approved and licensed storage, treatment, or disposal facility.

QUESTION 19

The proposed site is near the Delaware River. Please identify whether it is located within either a 100-year or 500-year floodplain. If so, please provide the elevations and discuss the amount of any fill that may be required for flood proofing purposes.

The proposed project site is located outside of the 100 year flood zone, as shown on the 1993 Water Resource Protection Areas Map for City of Newark, City of Wilmington, and New Castle County, Delaware (Map 1 of 3). The proposed project site is an extension of the existing Hay Road No. 5 – 8 plateau. Accordingly, no fill will be required.

QUESTION 20

Please provide the site surveys mentioned that show no impact on threatened and endangered species, as well as how determinations were made with regard to wetlands and cultural resources.

A series of seasonal site surveys for endangered and threatened species was conducted as part of the previous Coastal Zone studies for Hay Road Units 1-4, and subsequent Hay Road Units 5-8. As stated in those applications, no species listed as threatened or endangered by the State of Delaware or the U.S. Fish and Wildlife Service occur, or are expected to occur, on or in the vicinity of the project site. Such findings have been verified by historic surveys dating back to 1980. The Delaware River is located 1,200 ft to the east, and the industrial land uses preclude the presence of potentially suitable ecologically valuable habitat for such species.

With regard to wetlands, Conectiv Energy's proposed project area was part of a comprehensive wetland delineation study conducted by ENSR for the Hay Road Units 5-8 project in 2000. EWNSR summarized the results of this study in their March 2000 Hay Road Facility Wetlands Delineation Report (Project Report 1855-0004-003) which is provided as Attachment VI. In brief, this report states: "ENSR's review of the aerial map (Figure 1) did not indicate the presence of any wetlands associated with the proposed Hay Road facility. The project site, as well as the surrounding area was indicated as a heavily industrialized area with little or no

wetlands except those associated with Shellpot Creek. In addition, neither the National Wetlands Inventory nor the State Wetland map indicated wetlands within the vicinity of the Hay Road facility. ENSR reviewed available soil mapping for the location of the Conectiv facility to determine potential areas that may contain hydric soils and, consequently, wetlands. The Natural Resource conservation Service (NRSC, formerly the Soil Conservation Service) mapping supplement identified the following soil systems within the facility limits: Othello-Fallsington-Urban land complex and Aldino-Keyport-Mattapex-Urban land complex. Both soil complexes consist of Urban land makeup, which is described as areas predominantly utilized for streets, sidewalks, and buildings, and is typically characterized by several feet of fill material.” The only wetlands which were identified in the area consist of a small man-made pond and wetlands along a rail spur to the south. Both areas lie outside the proposed project area, are buffered from the project by existing Hay Road 5-8 facilities, have been determined to be not jurisdictional by the U.S. Army Corps of Engineers in an April 2000 wetlands determination, and will not be affected.

Finally, with regard to cultural resources, the project site represents a classic brownfield site based on historical uses, as described in the July 2000 Coastal Zone Permit Application. After review of the previous Hay Road projects New Castle County’s Planning Division issued Conectiv Energy the Evidence of Local Zoning and Land Use determination. This verification was based on the industrial zoning and historic overlay zoning of the Hay Road tax parcels. As noted before, the project site is located within a heavily industrialized area on “fill” soils.

QUESTION 21

The question requests a map showing the anticipated placement of all facilities at the site of the project. Conectiv is requested to provide a plot plan that identifies “any necessary rights-of-way, size, fuel supply route, fuel storage, cooling source, waste disposal, interconnection point, etc.” Please identify all key facilities on the map provided or provide another map that does so.

Refer to Attachment VII.

All of the development will be contained to property under the ownership and control of Conectiv Energy or one of its affiliates. Existing infrastructure is in place to minimize any off site disturbance. Where possible, existing facilities will be used and controls will be applied to manage resources.

For specific information, the following is offered along with the referenced attachments:

Drawing HR-100-E-MD2001 shows the overall limits of the property, including the existing Hay Road Power Complex and Edge Moor Power Station. The proposed location of the new units is shown on this plan, along with the location of the existing low sulfur light petroleum product storage tank, cooling water source, and blow down location at the existing Edge Moor discharge canal, which will be utilized in operation of the new units.

Drawing HR-100-E-MD2002 shows the layout of the new units, in addition to the electrical transmission and natural gas supply interconnection points. The existing low sulfur light petroleum product storage tank is also identified again for clarity.

Detail of the facility layout is shown on Sheet 2.

“Rights of Way” are not required, since the new generation units will utilize points of interconnection and services within the existing property boundaries.

Since this is a clean technology combined cycle plant, waste disposal areas, such as ash disposal, are not required. There is no large scale industrial byproduct that will require a large staging area for disposal. Any hazardous waste will be managed using licensed and certified entities.

The facility expects to install one additional anhydrous ammonia storage tank adjacent to Hay Road Units 1, 2, and 3 for the SCR required to meet environmental permitting pollution offsets. The SCR installed on Unit 9 will use the existing Units 5-8 anhydrous ammonia tank (No. 23 on dwg. MD2002). Size of the new tank will be equal to or less than the size of the existing tank (30,000 pounds).

QUESTION 22

The schedule shows licensing starting in March 2007 and engineering in April 2007. Please identify the latest date by which approval could be obtained and still enable the plant to be on line by June 2011.

The project time line is established based on a March 2007 release. Critical path items are site permitting, detailed engineering, equipment procurement, construction, commissioning, and acceptance testing. If successful, Conectiv would execute the work scope on the tightest time line possible while concurrently managing costs.

Obviously, with any project of this magnitude, there are opportunities to accelerate the schedule via incentives to vendors and suppliers and overtime during the construction phases. Conectiv remains open to any acceleration requirements that DPL may identify. Adjustments to project pricing may be required.

QUESTION 23

Please provide a pro forma for the project, in Excel, with formulas. Conectiv's response indicates that a pro forma was attached, but one was not provided.

Please see Attachment VIII which was inadvertently not included in CESI's initial response. CESI believes that the information provided in Attachment VIII meets the requirements of the RFP. Any additional detail would involve the disclosure of highly confidential proprietary information which CESI would not want to be made available to the public. If such additional detail is required it would only be provided under conditions that ensure that it would not be subject to disclosure through a FOIA request or otherwise.

QUESTION 24

Please confirm the location for the Gas Daily price used in the energy pricing formulas (e.g. Henry Hub).

The Gas Daily price used in the energy pricing formulas for the Off-peak Dispatch or Dispatch after 4:30 p.m. in Base mode or the Peak Segment Dispatch is based on "Platts Gas Daily Texas Eastern M3, Daily Mid-point".

QUESTION 25

Please indicate whether or not the Peak Segment Dispatch price includes dispatch requests in the day-ahead and real-time markets. Please confirm this for both the Base and Alternate Bids proposed.

For both the Base and Alternate Bids proposals, the Peak Segment Dispatch price includes dispatch requests in the day-ahead and real-time markets.

QUESTION 26

Please confirm that the Energy Price for Off-peak Dispatch or Dispatch initiated after 4:30 pm in Base Mode applies to any real-time dispatch request as well as off-peak day ahead dispatch requests. Please confirm this for both the Base and Alternate Bids proposed.

For both the Base and Alternate Bids proposals, the Energy Price for Off-peak Dispatch or Dispatch initiated after 4:30 pm in Base Mode applies to any real-time dispatch request as well as off-peak day ahead dispatch requests.

QUESTION 28

For the Base Mode of operation during on-peak hours, is the Energy Price after contract year 1, escalated based on (a) or (b) or (c) below as the base price (that is being adjusted):

- *The 2012 energy price in Table 1, adjusted according to the one-time adjustment for natural gas forward prices (HH), for each year;*
- *The energy price in Table 1 for the applicable year; or*
- *Neither (please specify the correct method).*

Provide a specific example showing how energy prices will be escalated and a written description of the methodology.

Neither. Please see explanation below.

[REDACTED]

[illegible]

QUESTION 29

Please confirm whether minimum run blocks (time of capacity) would apply in the Alternate proposal and if so, describe the minimums required.

DPL can request energy dispatched, under the alternate proposal, in the same run blocks as the Base proposal.

QUESTION 30

Please provide a 5 year history for all indices used in the pricing formulas

Daily closing prices for the NYMEX natural gas futures contract are available on the NYMEX website. Historical data for monthly natural gas futures may also be available on the NYMEX website.

If historical NYMEX natural gas futures data is not available on the NYMEX website, CESI has the ability to generate such data over a limited number of prior years. This data is available to CESI through an agreement for services with a third party vendor. CESI's agreement with the vendor precludes CESI from supplying the data to any other party. CESI could make such data available to other parties for review only in CESI's offices.

Historical data for the Implicit GDP price deflator is available from the U.S. Department of Commerce, Bureau of Economic Analysis.

The Platts OTC Coal Broker Based Index may be available over a limited number of prior years and only through CESI's agreement with a third party vendor. Any available data could only be reviewed in CESI's offices.

QUESTION 31

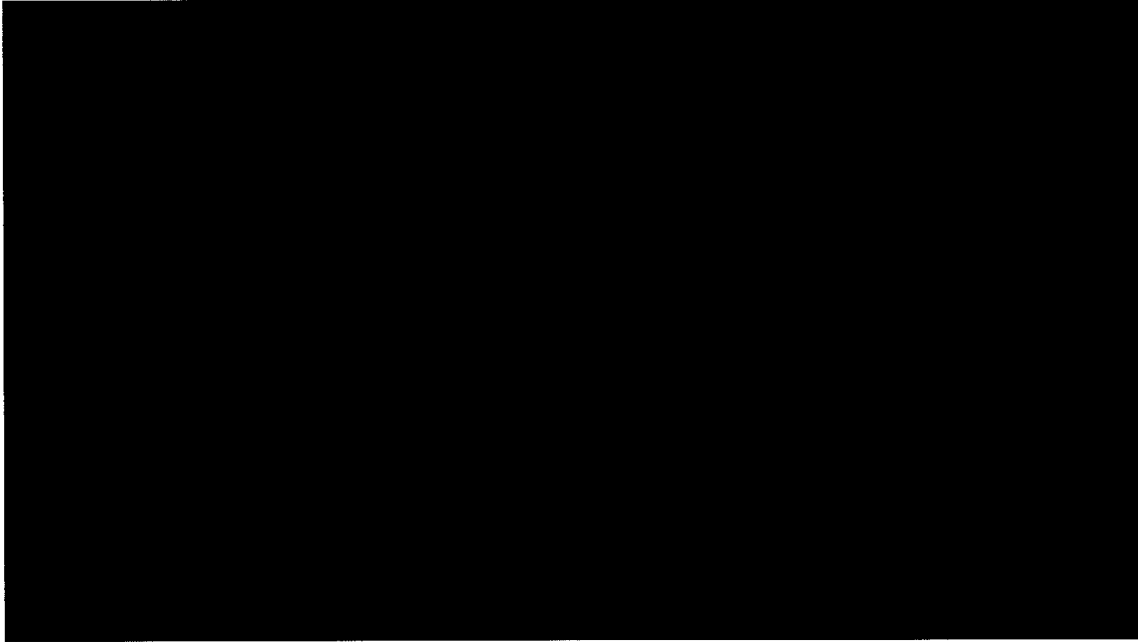
PPA pricing in Conectiv's proposal shows energy prices escalating at 2.5% per year. It then describes a price adjustment for the output in Base Mode – peak hours, and prices for the output in Base Mode – off-peak hours for Peak Mode output. Base Mode is defined as output up to 152 MW and Peak Mode is defined as output of 152 to 177 MW.

- *Is the described adjustment made to the fixed but escalated amounts in Table 1?*
- *The adjusted energy price for the Base Mode – peak hours time period equals the energy price in Table 1 adjusted for changes in the NYMEX Henry Hub monthly average prices. After year one, the energy price escalates 50% at a Coal Broker's Index and 50% at GDP. Why did Conectiv choose these escalators for energy price adjustments for the energy price for a plant that burns natural gas?*

The energy output curve provided below shows the base and peak load segments as a function of ambient temperature. For every ambient temperature, there is a unique and specific output for the base and peak segments. The value is not fixed.

The pricing examples in Form R only reference a single condition at 59°F and actual plant output will change as a function of ambient temperature.

DELMARVA POWER RFP
BASE AND PEAK LOAD SEGMENTS
OUTPUT VS. AMBIENT TEMP (°F)



Clarification of Energy Price Calculations & Use of escalators for Energy Price adjustments:

[Redacted text block]

[Redacted text line]

[Redacted text line]

[Redacted text line]

[Redacted text line]

[Redacted text line]

[Redacted text line]

For Contract Years 2-10:

[REDACTED]

[REDACTED]

QUESTION 32

- 1. Please describe why the proposed price index using NYMEX Henry Hub gas prices is an acceptable method for calculating capacity prices.*
- 2. Please describe how the proposed price index using NYMEX Henry Hub gas prices is associated with the cost of constructing or operating new generation capacity?*
- 3. What is the Target Equivalent Availability Factor (guaranteed equivalent availability factor as defined in the standard form PPA)?*
- 4. Please specify the ancillary services that the Facility is capable of providing and the level of availability for each product, including applicable operating limits.*
- 5. Please provide specific formulas for the computation of the energy price for the base mode of operation.*

6. *Please confirm that the base period of operation is for weekdays from 8 a.m. through 11 p.m., excluding NERC holidays.*
7. *Please confirm that Delmarva has dispatch rights to the energy during the base period of operation for up to 152 MW, subject to day-ahead notice and an eight-hour minimum run time. If this is not correct, please specify Delmarva's rights and obligations regarding this block of energy.*
8. *Please specify what natural gas index would be used from Gas Daily and how specifically the Energy Price would be derived, with the exception of VOM. Is the Gas Daily price a delivered price?*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

QUESTION 33

- 1. Please specify any differences between your Base Offer and your Alternative Offer other than:
 - i. Capacity price set forth in Table 1;*
 - ii. Rights to dispatch (Delmarva for the Base offer and Conectiv for the Alternative Offer)*
 - iii. Conectiv's right to deliver energy from a source other than the units.*
 - iv. The obligation to provide energy is on a firm basis.**
- 2. Is the obligation to provide a specific amount of UCAP firm? If so, what is the amount of UCAP?*
- 3. Is your proposal to be paid the capacity price for the amount of UCAP or the amount of summer net capability? If the latter, what would be the Target Equivalent Availability Factor and how would the availability adjustment mechanism work?*
- 4. What are the potential points of delivery at which Seller may sell energy to Delmarva?*
- 5. Regarding exception #1: What do you mean by "Buyer shall be permitted to direct Seller to deliver Energy from any source to the Delmarva Zone based on a Base Mode of operation of the Unit (i.e., at 152 MW) or a Peak Mode of operation of the Unit (i.e., 177 MW)"?*
- 6. Is it the Buyer's option to purchase energy for each of the following, subject to the constraints identified regarding notice and minimum run time: base mode of operation (day ahead), off-peak dispatch or base mode dispatch initiated after 4:30 pm the day before, or peak segment?*

[REDACTED]

[REDACTED]

Response to Item 3

The capacity price for the base and alternate offer will be based on the amount of UCAP with a Forced Outage Rate of [REDACTED]. The Target Equivalent Availability is [REDACTED] for the base and [REDACTED] for the Alternate Offer. The adjustment mechanisms and payments will be per the PPA.

Response to Item 4

The Delivery point for the Base and Alternate offer will remain the Red Lion 230 kV (DPL Bus 23020).

Response to Item 5.

The red-lined changes to Section 3.1 of the PPA for the Alternative Offer now provides that Seller shall select the source of the Energy and that deliveries shall be made to Buyer at Red Lion 230 kV (DPL Bus 23020).

Response to Item 6

Yes. It the Buyer's option to purchase energy for each of the following, subject to the constraints identified regarding notice and minimum run time: base mode of operation (day ahead), off-peak dispatch or base mode dispatch initiated after 4:30 pm the day before, or peak segment

QUESTION 34

Please provide an Excel spreadsheet showing annually for each year in the contract the following information (for the Base Offer and Alternative Offer):

- *Expected capacity payments based on the Target Equivalent Availability Factor (or other specified basis) and the assumed changes in the assumed escalator(s) (e.g., NYMEX Henry Hub monthly average prices);*
- *Energy sold by Conectiv to DPL during (a) the Base Mode – peak hours, (b) the Base Mode – off-peak hours, and (c) Peak Mode operations.*

The annual energy price for each of the above periods using Conectiv's proposed price formulae. Provide all underlying assumptions and calculations.

Please refer to Attachment IX of this document.

QUESTION 35

Please describe in detail the ancillary services to be provided by the facility.

As part of the PPA pricing, Conectiv will provide 100% of the reactive power and operating reserve ancillary services to Delmarva.

QUESTION 36

Please provide your requested changes to the standard form of Power Purchase Agreement (PPA) for the Base Offer and Alternative Offer in the form of a redlined version of the PPA in MS Word format, as requested in Section 2.3.9 of the RFP Instructions to Bidders.

Attachment X and Attachment XI are provided for the Base and Alternate Proposal, respectively.

QUESTION 37

Please explain why Conectiv should not be required to provide a second lien in addition to the collateral requirements set forth in Sections 8.1 and 8.2 of the standard PPA, or kindly withdraw Conectiv's exception.

The collateral requirements set forth in Sections 8.1 and 8.2 are typical in the industry for transactions of this type and are intended to adequately protect the Buyer in the event of a default by the Seller. By asking that CESI also provide a lien on the Project Delmarva is seeking more than is required in the market for these transactions and requires CESI to provide an unnecessary "belt and suspenders". While CESI does not believe that the lien is necessary or appropriate, the red lined PPAs included with this response provide that, if Delmarva and CESI agree that Sections 8.1 and 8.2 do not provide Delmarva with adequate security, CESI will provide the lien as requested. However, CESI notes that, because the Project will be located on land shared with another generating unit, any lien provided would be limited to a lien on the Project equipment and not on the land upon which it is located.

ATTACHMENT I – QUESTION 2 – REVISED FORM E

Form E - Firm Capacity Rating (UCAP)

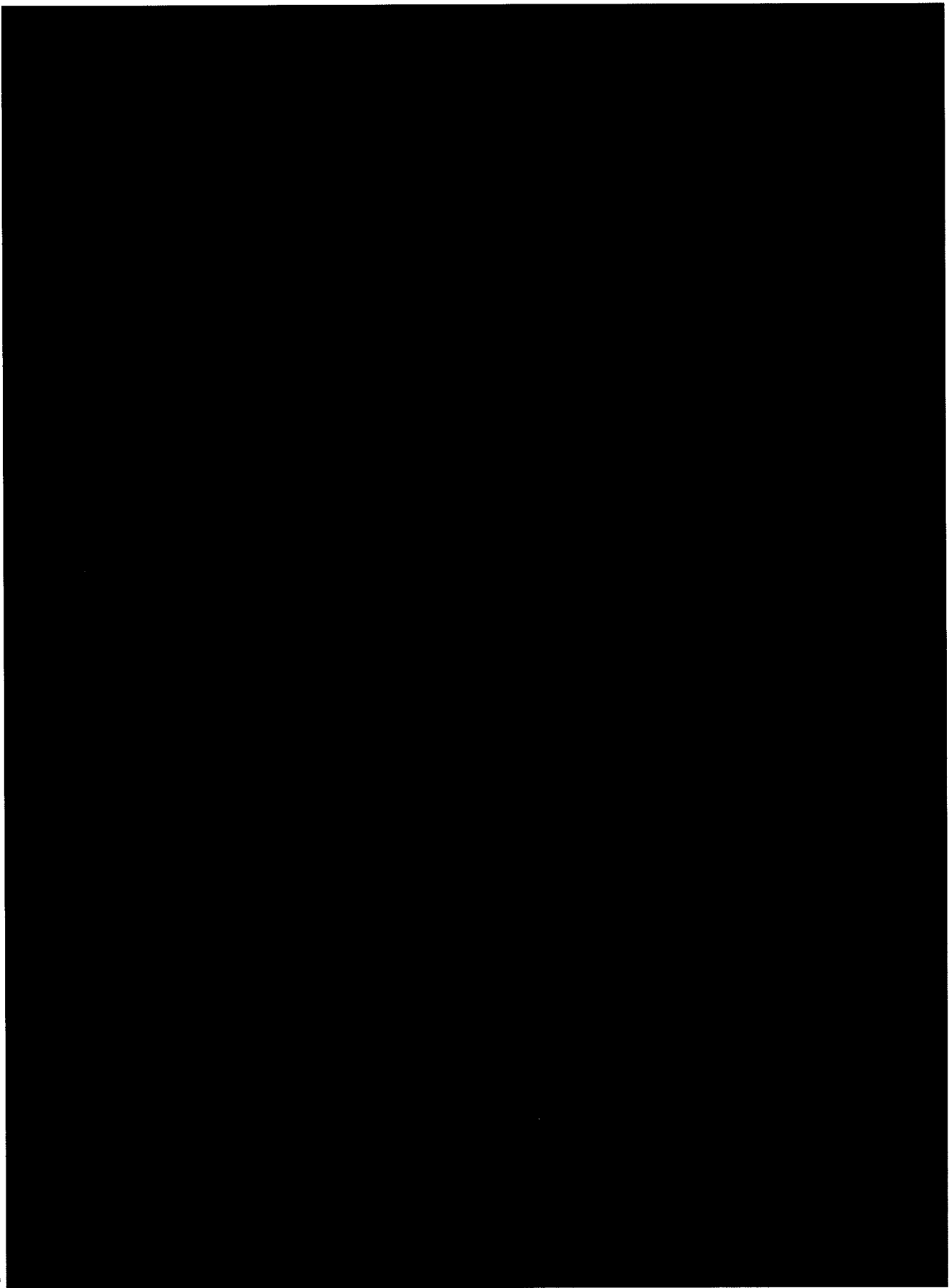
Please provide estimated summer net contract capacities in MW that would be available over the proposed contract term and also indicate any residual firm capacity that would be available to participate in the PJM capacity markets over the life of the proposed project. **The values should reflect the total anticipated PJM UCAP rated capacity over the indicated contract year according to the PJM market rules.**

Please confirm that the capacity will be located within the Delmarva zone.

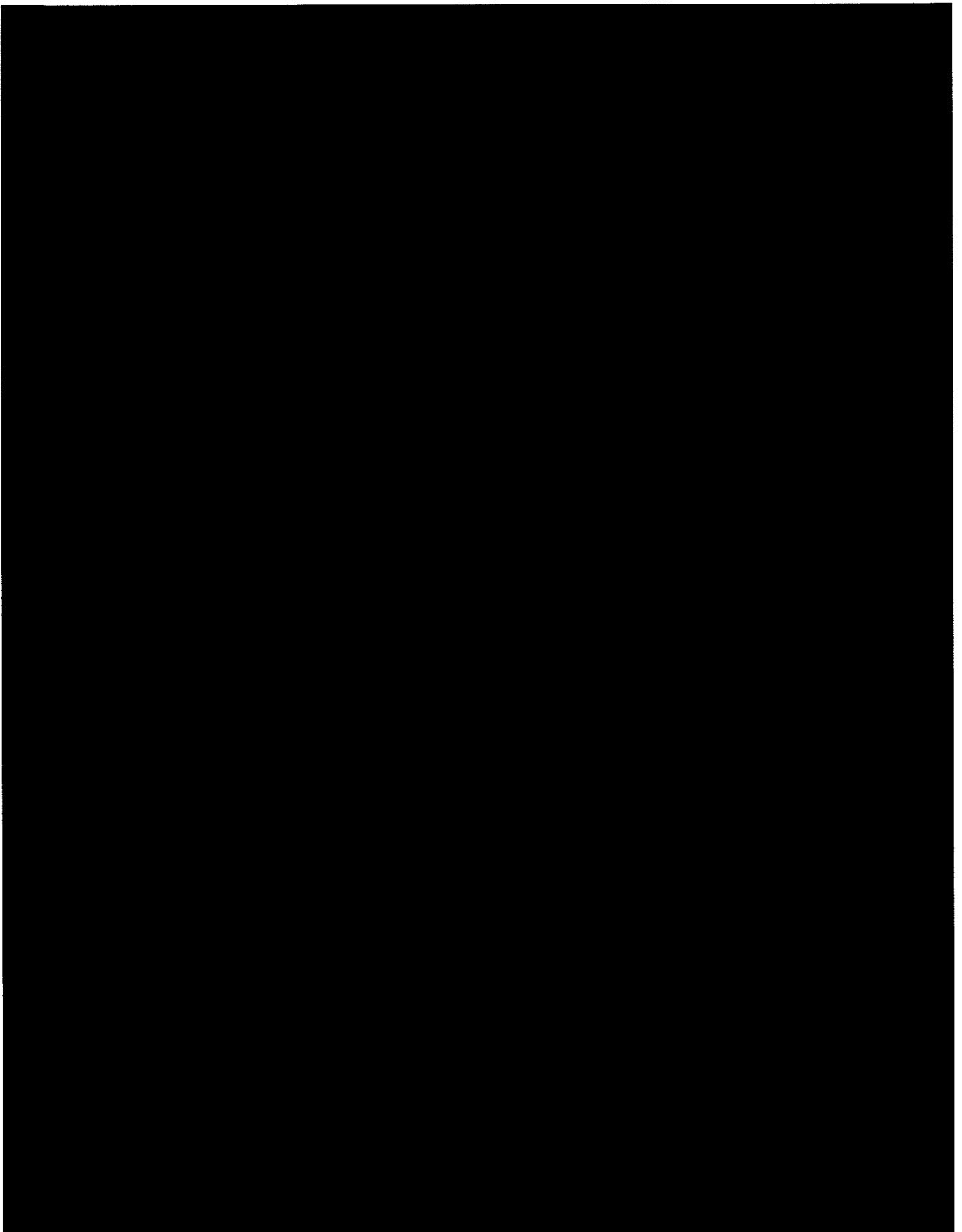
Contract Year	Location (Indicate PJM Zone)	Summer		Winter	
		Net Contract Capacity (Base)	Net Residual Capacity (Supplemental)	Net Contract Capacity (Base)	Net Residual Capacity (Supplemental)
6/1/2007 - 5/31/2008	PERMITTING / CONSTRUCTION / COMMISSIONING				
6/1/2008 - 5/31/2009					
6/1/2009 - 5/31/2010					
6/1/2010 - 5/31/2011					
6/1/2011 - 5/31/2012					
6/1/2011 - 5/31/2012	DP&L Bus 23020	172.6	0	170.6	0
6/1/2012 - 5/31/2013	DP&L Bus 23020	172.6	0	170.6	0
6/1/2013 - 5/31/2014	DP&L Bus 23020	172.6	0	170.6	0
6/1/2014 - 5/31/2015	DP&L Bus 23020	172.6	0	170.6	0
6/1/2015 - 5/31/2016	DP&L Bus 23020	172.6	0	170.6	0
6/1/2016 - 5/31/2017	DP&L Bus 23020	172.6	0	170.6	0
6/1/2017 - 5/31/2018	DP&L Bus 23020	172.6	0	170.6	0
6/1/2018 - 5/31/2019	DP&L Bus 23020	172.6	0	170.6	0
6/1/2019 - 5/31/2020	DP&L Bus 23020	172.6	0	170.6	0
6/1/2020 - 5/31/2021	DP&L Bus 23020	172.6	0	170.6	0
6/1/2021 - 5/31/2022	END OF CONTRACT TERM				
6/1/2022 - 5/31/2023					
6/1/2023 - 5/31/2024					
6/1/2024 - 5/31/2025					
6/1/2025 - 5/31/2026					
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6/1/2036 - 5/31/2037					
6/1/2037 - 5/31/2038					

Additional Notes (use additional sheets as necessary):

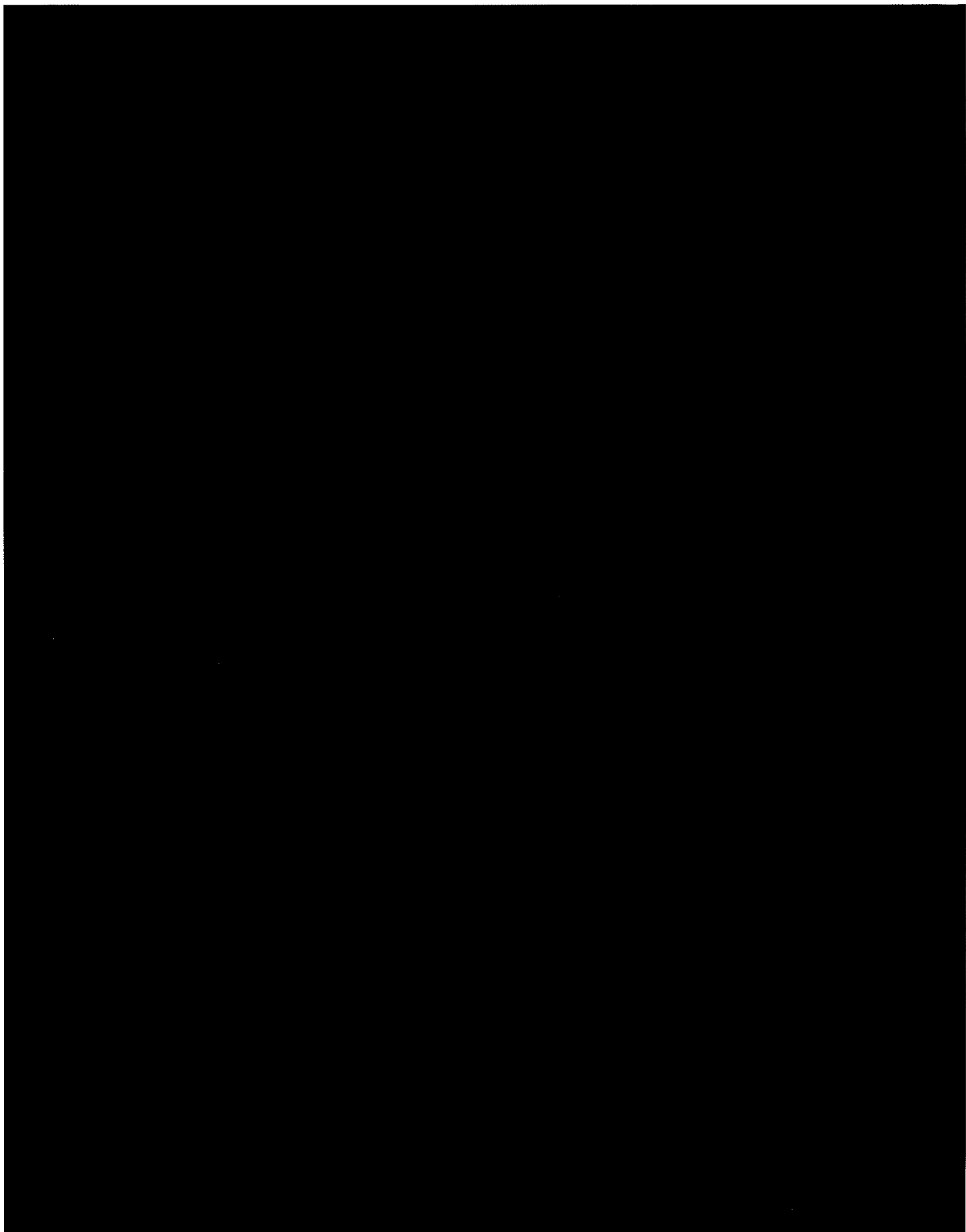
ATTACHMENT II – QUESTION 7 – CESI TRANSPORTATION SCHED



ATTACHMENT III – QUESTION 7 – CESI STORAGE AGREEMENT



ATTACHMENT IV – QUESTION 7 – CESI NAESB CONTRACT



ATTACHMENT V – QUESTION 14 – PERMIT SCHEDULE

**ESTIMATED ENVIRONMENTAL PERMITTING SCHEDULE
FOR CONSTRUCTION PERMITS**

MONTH

AIR RELATED PERMITS

DNREC Reg 2 & 25 Air Construction - PSD/Non Attainment Permit Approvals
DNREC Acid Rain Permit
DNREC/EPA Designated Rep /Alt Designated Rep Registration
DNREC/EPA NOx Budget Authorized Acct Rep/ Alt Authorized Account Representative Registration
DNREC/EPA CAIR Desig Rep / Alt Des Representative Registration
Modification to Existing Hay Road 1-3 Title V Operating Permit (offset source)
DNREC Reg 2 Construction Permit for SCR Device on Hay Road 1-3 (offset source)

OTHER DNREC

DNREC Coastal Zone Permit
DNREC NPDES/Stormwater Approval - Modification to existing Permit Approval
DNREC Facilities Permit

DRBC

Delaware River Basin Commission Water Use Section 3.8 Docket Decision Approval

NEW CASTLE COUNTY

New Castle County Land Development Approval
New Castle County Soil Erosion and Sediment Control Plan Approval
New Castle County Storm Water Management Plan Approval
New Castle County Wastewater Discharge to Sewer - Modification of Existing Approval

DEPARTMENT OF ENERGY

US Dept of Energy Fuel Use Act Certification

FEDERAL AVIATION ADMINISTRATION

US Fed Aviation Admin - Stack Height Approval

ATTACHMENT VI – QUESTION 20 – WETLAND SURVEY

JH 2/25/00

WETLAND DELINEATION REPORT

CONECTIV

HAY ROAD FACILITY

NEW CASTLE COUNTY, DELAWARE

Prepared for:

CONECTIV
113 Pencader Drive
Suite 100
Newark, Delaware 19702

Prepared by:

ENSR
2005 Cabot Boulevard West
Langhorne, Pennsylvania 19047

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1855-004-003

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1.0 INTRODUCTION

1.1 Project Description

Conectiv is proposing to construct a new combined cycle power plant at its existing Hay Road facility. The proposed plant will be developed in phases to a build-out capacity of a nominal 550-megawatt. The first phase will consist of the construction of three combustion turbines (CTs). During the construction of the second phase, the addition of a steam cycle, the CTs will be operated in simple-cycle mode. The principal components of the steam cycle consist of three heat recovery steam generators, a steam turbine/generator, and a cooling tower to allow steam condensation. The proposed Hay Road facility is situated north of the existing Hay Road Facility and south of an existing DuPont manufacturing facility. The Delaware River is located approximately 1,000 feet to the east and separated from the proposed site by occupied warehouses and other industrial buildings. The existing Edge Moor Power Plant facility is located to the southeast.

ENSR has been contracted by Conectiv to identify, delineate, and document all state and federally regulated wetlands within the area of the proposed modifications. ENSR completed the wetland delineation at the Hay Road facility on February 3, 2000 and this Wetland Delineation Report presents the results of ENSR's work efforts.

The report includes:

- Methodologies ENSR followed to complete the wetland delineation and documentation tasks (Section 2.1);
- A brief description of each wetland identified within the survey area (Section 2.2.2);
- Maps depicting the project area on USGS quadrangle, an aerial photograph, New Castle County Soil Survey, National Wetlands Inventory map, and the Delaware Department of Natural Resources State Wetland map (Appendix A);
- Field data sheets documenting each wetland/upland boundary (Appendix B);
- Color photographs of wetland locations (Appendix C); and
- Site plans depicting the wetland boundaries (Appendix D).

2.0 WETLANDS IDENTIFICATION AND DELINEATION

2.1 Methodology

Prior to conducting the wetland surveys in the field, ENSR reviewed the following available background information to determine the approximate extent of wetlands within the area of Conectiv's proposed modifications:

1. Site aerial provided by Conectiv (Appendix A, Figure 1);
2. USGS topographic quadrangle, Wilmington South, Delaware (Appendix A, Figure 2);
3. Soil Conservation Service (SCS), Soil Survey of New Castle County (Appendix A, Figure 3);
4. USFWS National Wetlands Inventory (NWI) Map (Appendix A, Figure 4); and
5. Delaware Department of Natural Resources State Wetland Map (Appendix A, Figure 5).

On February 3, 2000 ENSR conducted the wetland delineation in the location Conectiv is proposing its modifications. These field activities were completed within the entire boundaries of the proposed Hay Road Facility, which included:

- All vegetated areas associated with the inactive railroad spur;
- All areas east of Hay Road, especially the heavily vegetated undeveloped lot located along the northwestern portion of the property; and
- West of the adjacent industrial facilities forming the eastern property boundary.

The areas listed above were delineated in accordance with the US Army Corps of Engineers Wetland Delineation Manual (USACE, 1987). Based on this survey methodology, wetlands and other waters occurring within the study area were identified. These points were then flagged in the field and their positions were determined by licensed land surveyors contracted by Conectiv. Plotting of wetland/upland boundaries on the site plan was reviewed and confirmed by ENSR.

In delineating each wetland, ENSR documented the vegetation, soils, and hydrology within each of the wetlands' cover types (i.e., emergent, scrub-shrub, and forested), and in at least one surrounding upland area. In the event that adjacent wetlands shared similar vegetation composition, soil profile and hydrologic characteristics, documentation was completed for only one of these wetlands. ENSR marked the location of each documentation plot in the field labeled with "Wetland Plot, A, B," etc. or "Upland Plot, A, B," etc. for upland plots. Information for each documentation plot has been recorded on Field Data Forms provided in Appendix B. Appendix C contains photographs for the documentation plots. The location of each documentation plot was surveyed and is shown on the Wetland Drawings (Appendix D).

The specific methods for characterizing and evaluating vegetation, hydrology, and soils were performed as follows:

Vegetation: Dominant plant species in each major vegetative stratum (tree, sapling/shrub, vine and herbaceous) were identified for each documentation plot. ENSR identified plant species using appropriate botanical reference material for the region. Nomenclature for these species conforms to that of the National List of Scientific Plant Names (USDA/SCS 1982). Species abundance in both upland and wetland communities were visually estimated. The indicator status of each species was identified using the National List of Plant Species That Occur In Wetlands, Region 1-Northeast (Resource Management Group, 1992). Hydrophytic vegetation was determined to be present where more than 50% of the dominant species were classified as facultative (FAC), facultative wetland (FACW), or obligate (OBL). Additional indicators of hydrophytic vegetation, including buttressed tree trunks, shallow root systems, and multiple trunks, were also considered in the evaluation of the presence of hydrophytic vegetation.

Soils: For each documentation plot, ENSR characterized the soil profile to determine the area's hydric soil status. Borings to observe the soil profile were taken with a hand-held auger and were taken to depths necessary to accurately determine a soil's hydric status (typically 20 inches deep). The information collected for each soil profile included each soil horizon's depth, texture, color, and the presence or absence of redoximorphic features (mottles). Colors of the

soil matrix and mottles were identified using the Munsell Soil Color Charts. ENSR based all hydric soil determinations on criteria established in the Wetland Delineation Manual (USACE, 1987). Additionally, ENSR also noted the presence of any saturation and/or standing water encountered during the soil profile description. The soil profile description, sub-surface hydrology notes, and hydric determination for each documentation plot is provided on the Field Data Sheets (Appendix B).

Hydrology: ENSR observed evidence of wetland hydrology for each potential wetland area. Evidence of wetland hydrology includes inundation, saturation in the upper twelve inches of soil, standing water in an open bore hole, drainage patterns, morphological plant adaptations, oxidized root channels, water marks, surface scouring, water-stained leaves, sediment deposits, drift lines, moss lines, and/or bare areas. The observation of wetland hydrology for each documentation plot is provided on the Field Data Sheets (Appendix B).

2.2 Results

2.2.1 General Observations

As shown on Figures 1-3, the proposed Hay Road facility is situated north of the existing Hay Road Facility and south of an existing DuPont facility. The Delaware River is located approximately 1,000 feet to the east and separated from the proposed site by occupied warehouses and other industrial buildings. The existing Edge Moor facility is located to the southeast. The proposed modifications will occur within the vicinity of the railway spur situated on-site and northward, specifically within the area presently utilized by several warehouses. Two wetlands were located on-site, however soils associated with these wetlands were highly disturbed and evidence of fill and debris material was observed. These wetlands are associated with a man-made pond and a depressional area located along an existing inactive railroad spur.

ENSR's review of the aerial map (Figure 1) did not indicate the presence of any wetlands associated with the proposed Hay Road facility. The project site, as well as the surrounding area was indicated as a heavily industrialized area with little or no wetlands, except those associated with Shellpot Creek. In addition, neither the NWI (Figure 4) nor

the State Wetland map (Figure 5) indicated wetlands within the vicinity of the Hay Road facility.

ENSR reviewed available soil mapping (Figure 3) for the location of the Conectiv facility to determine potential areas that may contain hydric soils and, consequently, wetlands. The Natural Resource Conservation Service (NRCS, formerly the Soil Conservation Service) mapping supplement identified the following soil systems within the facility limits: Othello-Fallsington-Urban land complex and Aldino-Keyport-Mattapex-Urban land complex. Both soil complexes consist of an Urban land makeup, which is described as areas predominantly utilized for streets, sidewalks, and buildings and is typically characterized by several feet of fill material. Fifty percent of the Aldino-Keyport-Matapex series is typified by 18 inches of fill, while the remainder consists of the original soil profile. In areas where fill is not present, seasonal wetness and a high water table are characteristic of this series, however none of the soils within this series are listed as hydric. The Othello-Fallsington complex is described as a poorly drained, nearly level soil, which also exhibits seasonal wetness and a high water table. Both the Othello and Fallsington soil series are listed as hydric per the New Castle County hydric mapunit listing.

Overall, during the field survey performed on February 3, 2000 two wetlands were delineated, which are not depicted on either the USGS topographic maps or specifically listed as hydric soils by the SCS soils maps.

2.2.2 Site Specific Wetland Descriptions

The following provides a site-specific description of the two wetlands delineated at the proposed Conectiv Hay Road facility. Refer to the Wetland Determination Data Sheets (Appendix B) for additional wetland specific information. It should be noted, that on the day of the delineation, February 3, 2000, five to six inches of snow was present on the ground.

Latex Pond Wetland

A wetland was delineated in association with the man-made pond (herein referred to as the Latex Pond) located on-site. The Latex Pond is located east of Hay Road, north of

the railway spur, and west of the vicinity of the proposed modifications. Two documentation plots were completed to justify the delineated wetland boundary (See Appendix B).

The Latex Pond wetland exceeds 50 percent composition of hydrophytic vegetation, which includes common reed (*Phragmites australis* - FACW), poison ivy (*Toxicodendron radicans*, FAC), red maple (*Acer rubrum*, FAC), and pin oak (*Quercus palustris*, FACW). Due to a great deal of disturbance within the area the soils analysis was inconclusive and not consistent with the colors listed by the Munsell soil color charts. Large amounts of brick debris and fill were present in association with the man-made water-body. At the time of observation, hydrology within this wetland was evident due to saturation to the surface and six inches of standing water in the borehole.

This wetland is surrounded by upland vegetation including poison ivy, Japanese honeysuckle (*Lonicera japonica*, FAC-), Japanese knotweed (*Polygonum cuspidatum*, FACU-), blackberry (*Rubus allegheniensis*, FACU-), and black cherry (*Prunus serotina*, FACU). As previously stated within the wetland description, the soil analysis was inconclusive due to debris and fill material. However, this upland area lacked any evidence of hydrology to support hydric vegetation.

Rail-Road Spur Wetland

This wetland complex is situated within the southeastern corner of the Hay Road facility at the terminus of an inactive railway spur, adjacent to the Hay Road Power Plant property.

Dominant wetland vegetation associated with this wetland consisted of only two species black willow (*Salix nigra*, FACW+) and common reed. Soils were characteristic of a 5Y 4/2 matrix. Hydrology was evident due to saturated soils at the surface.

The surrounding upland was dominated by vegetation consistent with developed and disturbed industrial areas, such as associated with the inactive railroad spur. Queen Anne's lace (*Daucus carota*, FACU) as well as upland grasses and an upland aster species dominated this area. Soils within this area were characterized by a 10YR 3/3

matrix, which exhibited no hydric indicators. This upland also lacked any evidence of hydrophytic vegetation or surface hydrology.

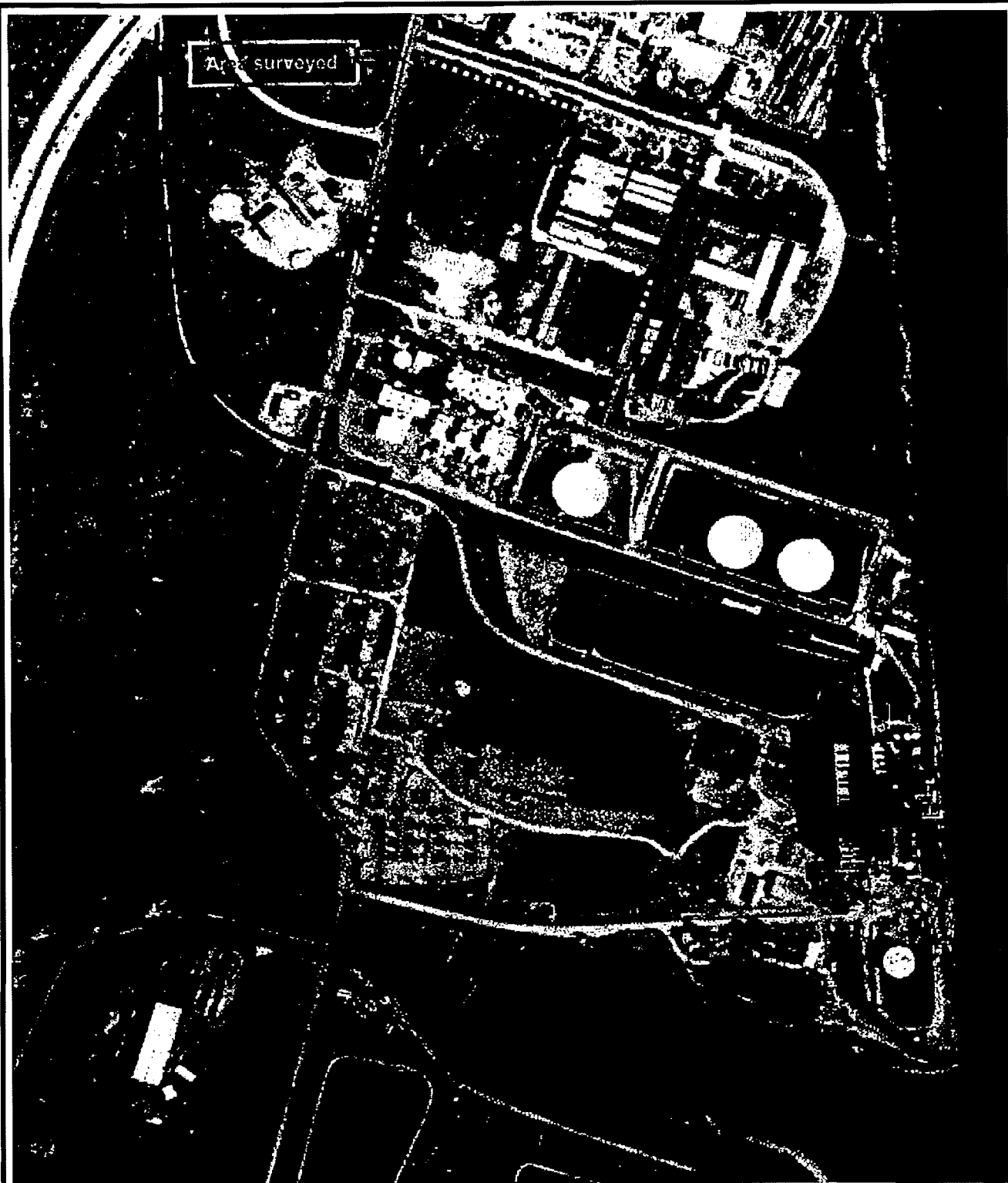
3.0 SUMMARY AND CONCLUSIONS

ENSR conducted a site investigation of the Conectiv Hay Road facility on February 3, 2000. Prior to the field investigation, ENSR staff reviewed the USGS topographic map, the site aerial, the Soil Survey maps, as well as the NWI and State Wetland maps. These mapping supplements were reviewed to ascertain the approximate location of state and federally regulated wetlands, potentially situated within Conectiv's property boundaries. During the field investigation, an ENSR scientist delineated two wetlands. One of which, the rail spur, is located within the vicinity of the proposed modifications. This wetland was vegetated with invasive hydrophytic species in an existing industrial area. It is ENSR's understanding, that the wetland associated with the man-made pond will not be impacted or encroached upon as a result of the proposed modifications.

4.0 REFERENCES

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APPENDIX A
FIGURES



Site Location Aerial

Source: Conectiv

Conectiv

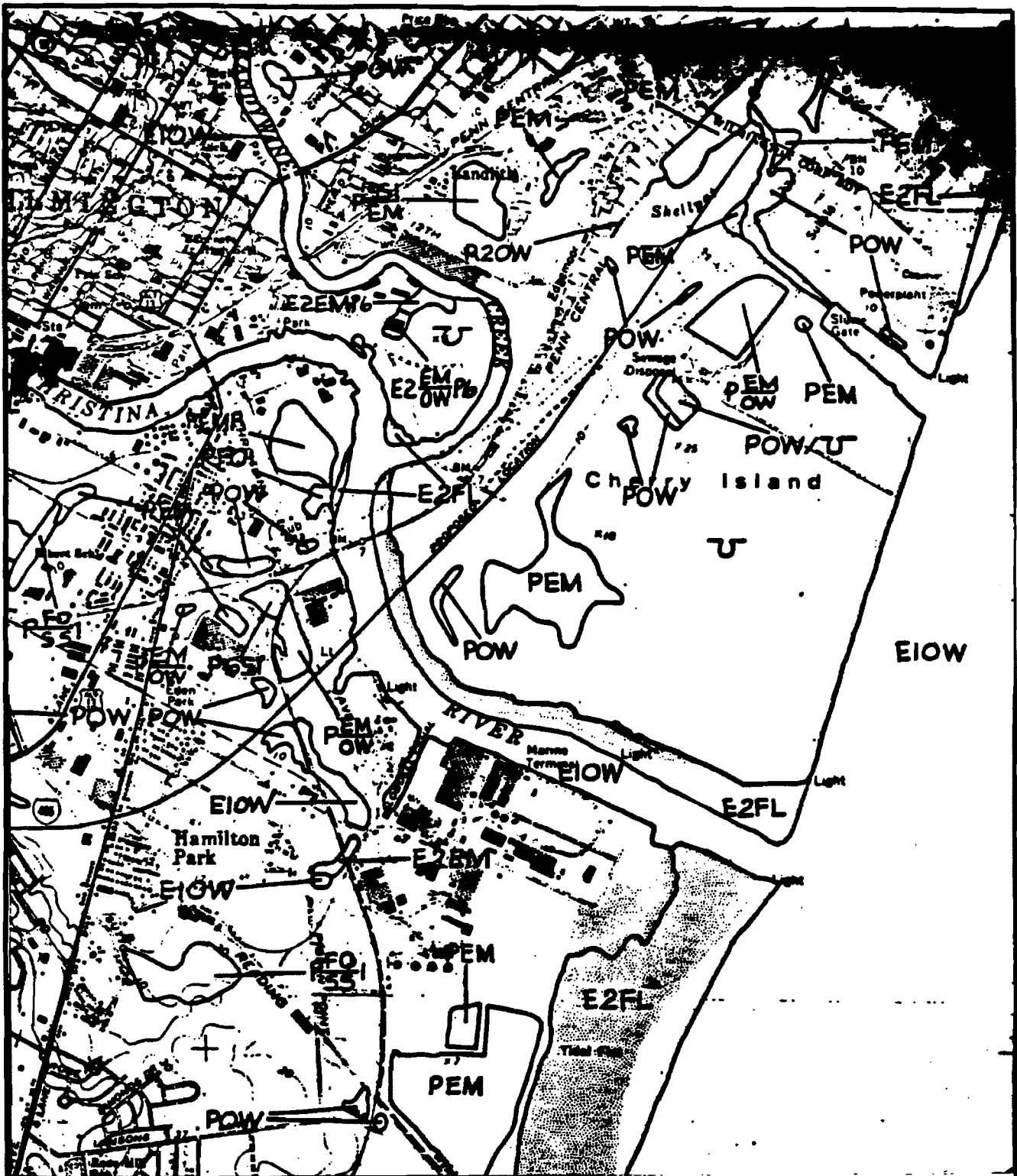
Hay Road Facility
Wilmington
New Castle County, DE

February 2000

Job No. 1855-004

FIGURE 1

ENSR®



National Wetlands Inventory Map

Source: Dept. of the Interior-
USFWS
1975

Scale: 1:24,000

Connectiv

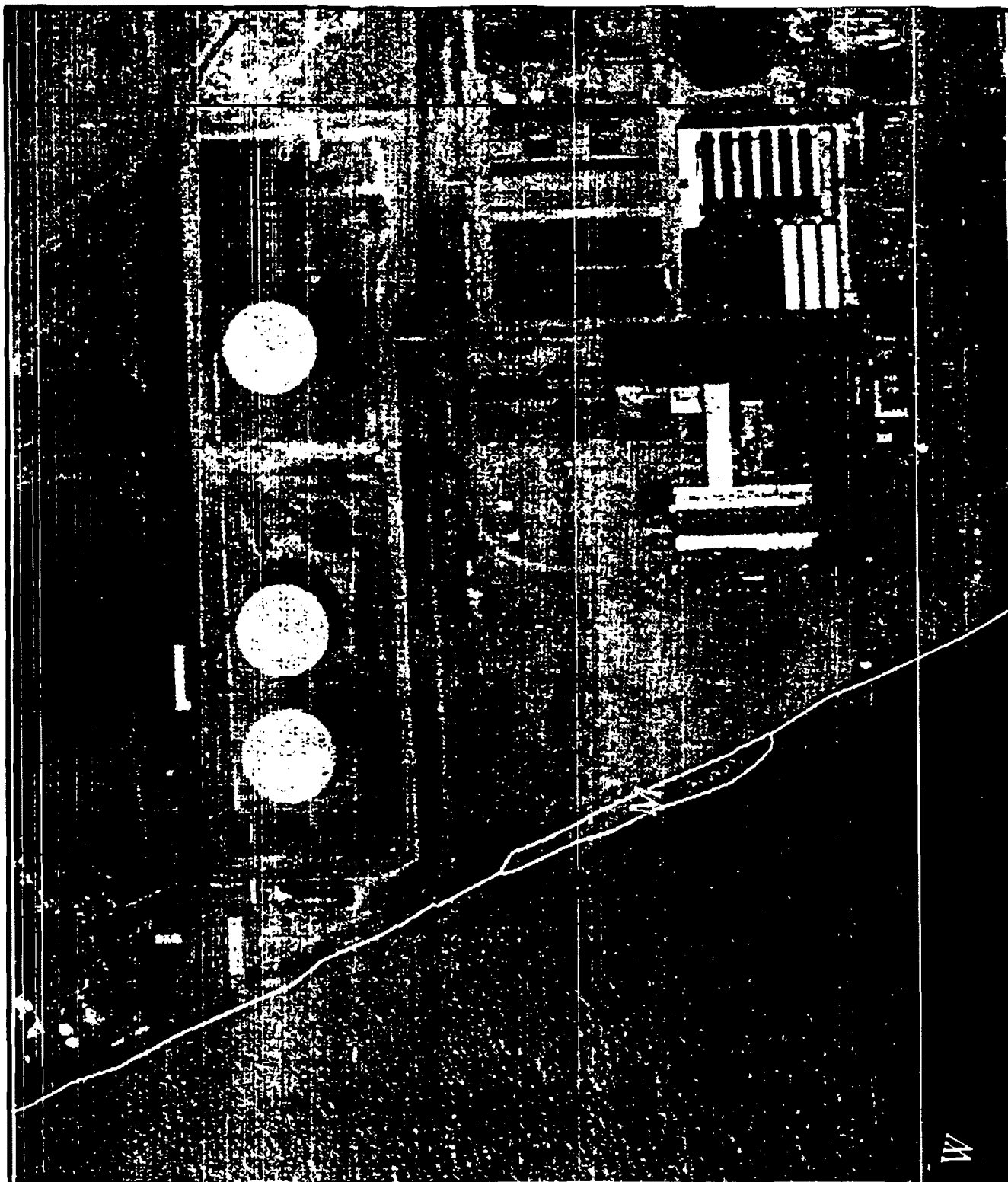
Hay Road Facility
Wilmington
New Castle County, DE

February 2000

Job No. 1855-004

FIGURE 4

ENSR®



State Wetlands Map

Source: Delaware
Dept. of Natural Resources
1988

Scale: 1 inch = 300 feet

Conectiv

Hay Road Facility
Wilmington
New Castle County, DE

February 2000

Job No. 1855-004

FIGURE 5

ENSR®

APPENDIX B
FIELD DATA SHEETS

FIELD DATA FORM FRESHWATER WETLAND DETERMINATION

Applicant: Conectiv Date: February 2, 2000
 Site Location: Hay Road Facility Field Investigators: Lisa Haus
 State: Delaware County: New Castle Plot Number/Cover type: Wetland plot (pond)
 Photograph Number: 1 and 2

Normal Circumstances? Yes ☐ No ☒ If no, explain: Area highly disturbed. Fill and debris present.
Also, 5-6 inches of snow was present on the ground the day of the delineation.

VEGETATION

Dominant Species	Indicator	Dominant Species	Indicator
<u>Herbaceous Layer:</u>	<u>Status</u>	<u>Vines:</u>	<u>Status</u>
<u>Phragmites australis</u>	<u>FACW</u>	<u>Smilax rotundifolia</u>	<u>FAC</u>
		<u>Toxicodendron radicans</u>	<u>FAC</u>
<u>Tree Layer:</u>		<u>Sapling/Shrub Layer:</u>	
<u>Quercus palustris</u>	<u>FACW</u>	<u>No shrub layer</u>	
<u>Acer rubrum</u>	<u>FAC</u>		

Percent species that are OBL, FACW, and/or FAC: 100 percent
 Hydrophytic vegetation? Yes ☒ No ☐ Rational: Greater than 50%

SOILS

Depth (inches)	Matrix Color	Redoximorphic Feature Color	Texture

No ☐ Comments: Soils inconclusive due to high levels of disturbance consisting of fill and debris. Soils did not match Munsell color charts.

HYDROLOGY

Depth of/to: Inundation NA Check indicators of hydrology that apply:
 Saturation To surface ☐ Water marks ☐ Water-stained leaves
 Free water At 6" ☐ Sediment deposits ☐ Drift lines
☐ Drainage patterns ☒ Other: Buttressed roots

Wetland Determination: Wetland ☒ Upland ☐

FIELD DATA FORM **FRESHWATER WETLAND DETERMINATION**

Applicant: Conectiv Date: February 3, 2000
 Site Location: Hay Road Facility Field Investigators: Lisa Haus
 State: Delaware County: New Castle Plot Number/Cover type: Upland Plot (Pond)
 Photograph Number: 3

Normal Circumstances? Yes ☐ No ☒ If no, explain: Area highly disturbed. Fill and debris present.
Also, 5-6 inches of snow was present on the ground the day of the delineation.

VEGETATION

Dominant Species	Indicator	Dominant Species	Indicator
<u>Herbaceous Layer:</u>	<u>Status</u>	<u>Vines:</u>	<u>Status</u>
<u>Polygonum cuspidatum</u>	<u>FACU-</u>	<u>Toxicodendron radicans</u>	<u>FAC</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
<u>Tree Layer:</u>		<u>Sapling/Shrub Layer:</u>	
<u>Prunus serotina</u>	<u>FACU</u>	<u>Rubus allegheniensis</u>	<u>FACU-</u>
_____	_____	<u>Lonicera japonica</u>	<u>FAC-</u>
_____	_____	_____	_____
_____	_____	_____	_____

Percent species that are OBL, FACW, and/or FAC: 40% percent
 Hydrophytic vegetation? Yes ☐ No ☒ Rational: Less than 50%

SOILS

Depth (inches)	Matrix Color	Redoximorphic Feature Color	Texture

No ☐ Comments: Soils inconclusive due to high levels of disturbance consisting of fill and debris.

HYDROLOGY

Depth of/to: _____ Check indicators of hydrology that apply:
 Inundation Not present ☐ Water marks ☐ Water-stained leaves
 Saturation Not Present ☐ Sediment deposits ☐ Drift lines
 Free water Not Present ☐ Drainage patterns ☐ Other: _____

Wetland Determination: Wetland ☐ Upland ☒

FIELD DATA FORM **FRESHWATER WETLAND DETERMINATION**

Applicant: Conectiv
 Site Location: Hav Road Facility
 State: Delaware County: New Castle

Date: February 3, 2000
 Field Investigators: Lisa Haus
 Plot Number/Cover type: Wetland (RR spur)
 Photograph Number: 8 and 9

Normal Circumstances? Yes ☐ No ☒ If no, explain: Area highly disturbed. Fill and debris present. Also, 5-6 inches of snow was present on the ground the day of the delineation.

VEGETATION

Dominant Species	Indicator	Dominant Species	Indicator
<u>Herbaceous Layer:</u>	<u>Status</u>	<u>Vines:</u>	<u>Status</u>
<u>Phragmites australis</u>	<u>FACW</u>	<u>No vine layer</u>	
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

<u>Tree Layer:</u>		<u>Sapling/Shrub Layer:</u>	
<u>No tree layer</u>		<u>Salix nigra</u>	<u>FACW+</u>
_____	_____	_____	_____

Percent species that are OBL, FACW, and/or FAC: 100 percent
 Hydrophytic vegetation? Yes ☒ No ☐ Rational: More than 50%

SOILS

Depth (inches)	Matrix Color	Redoximorphic Feature Color	Texture
0-18	5Y 4/2	---	Sandy fill material.

No ☐ Comments: _____

HYDROLOGY

Depth of/to:	Check indicators of hydrology that apply:		
Inundation _____	<input type="checkbox"/> Water marks	<input type="checkbox"/> Water-stained leaves	
Saturation <u>At surface</u>	<input type="checkbox"/> Sediment deposits	<input type="checkbox"/> Drift lines	
Free water _____	<input type="checkbox"/> Drainage patterns	<input type="checkbox"/> Other: _____	

Wetland Determination: Wetland ☒ Upland ☐

FIELD DATA FORM **FRESHWATER WETLAND DETERMINATION**

Applicant: Conectiv
 Site Location: Hay Road Facility
 State: Delaware County: New Castle

Date: February 3, 2000
 Field Investigators: Lisa Haus
 Plot Number/Cover type: Upland (RR spur)
 Photograph Number: 6 and 7

Normal Circumstances? Yes ☐ No ☒ If no, explain: Area highly disturbed. Fill and debris present.
Also, 5-6 inches of snow was present on the ground the day of the delineation.

VEGETATION

Dominant Species	Indicator	Dominant Species	Indicator
<u>Herbaceous Layer:</u>	<u>Status</u>	<u>Vines:</u>	<u>Status</u>
<u>Daucus carota</u>	<u>NI</u>	<u>No vine layer</u>	
<u>Aster sp.</u>	<u>NI</u>		
<u>Panicum sp.</u>	<u>NI</u>		

<u>Tree Layer:</u>	<u>Sapling/Shrub Layer:</u>
<u>No tree layer</u>	<u>No shrub layer</u>

Percent species that are OBL, FACW, and/or FAC: 0% percent
 Hydrophytic vegetation? Yes ☐ No ☒ Rational: Less than 50%

SOILS

Depth (inches)	Matrix Color	Redoximorphic Feature Color	Texture
0-18	10YR 3/3	---	Fill material and rock.

No ☒ Comments: _____

HYDROLOGY

Depth of/to:	Check indicators of hydrology that apply:
Inundation <u>Not Present</u>	<input type="checkbox"/> Water marks <input type="checkbox"/> Water-stained leaves
Saturation <u>Not Present</u>	<input type="checkbox"/> Sediment deposits <input type="checkbox"/> Drift lines
Free water <u>Not Present</u>	<input type="checkbox"/> Drainage patterns <input type="checkbox"/> Other: _____

Wetland Determination: Wetland ☐ Upland ☒

APPENDIX C
SITE PHOTOGRAPHS



Photo 1: View looking northeast across Latex Pond located within the Hay Road facility. LP-1 wetland flag is located in the foreground.



Photo 2: View looking north at LP-3 wetland flag(in far background) associated with Latex Pond.



Photo 3: View looking northeast at debris observed on-site adjacent and to the west of Latex Pond.



Photo 4: View looking to the southeast toward the pipe rack located along the eastern portion of the property.

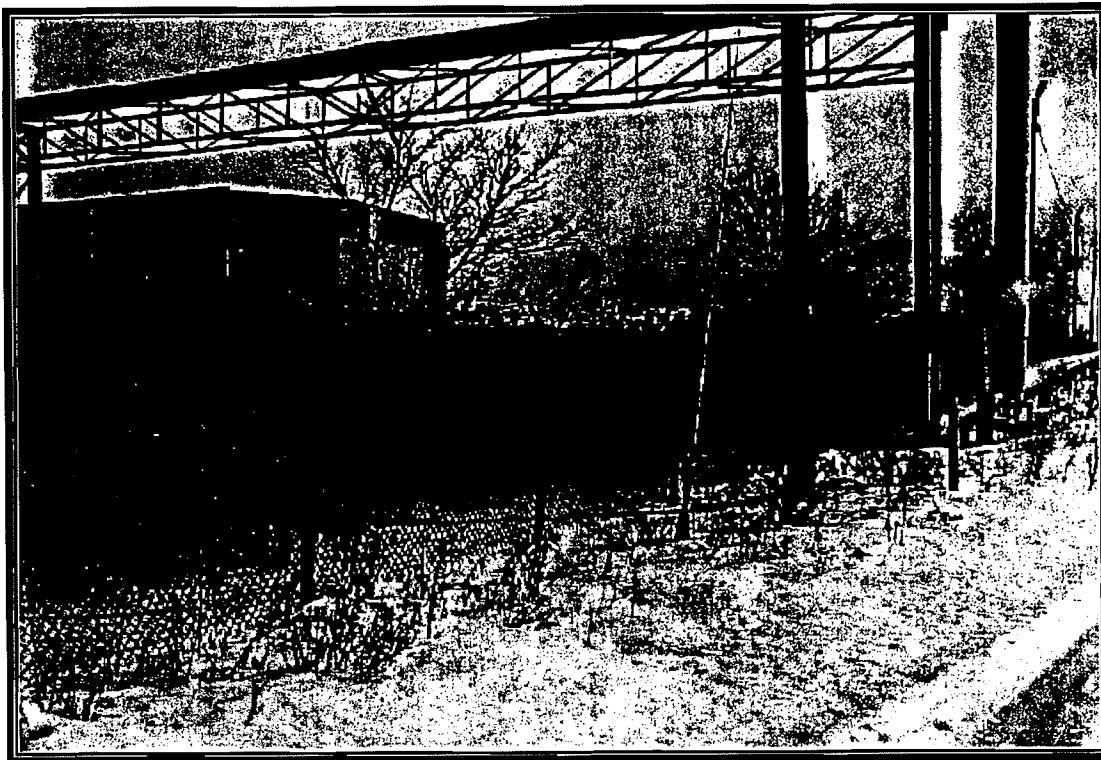


Photo 5: View to the east of the pipe rack.

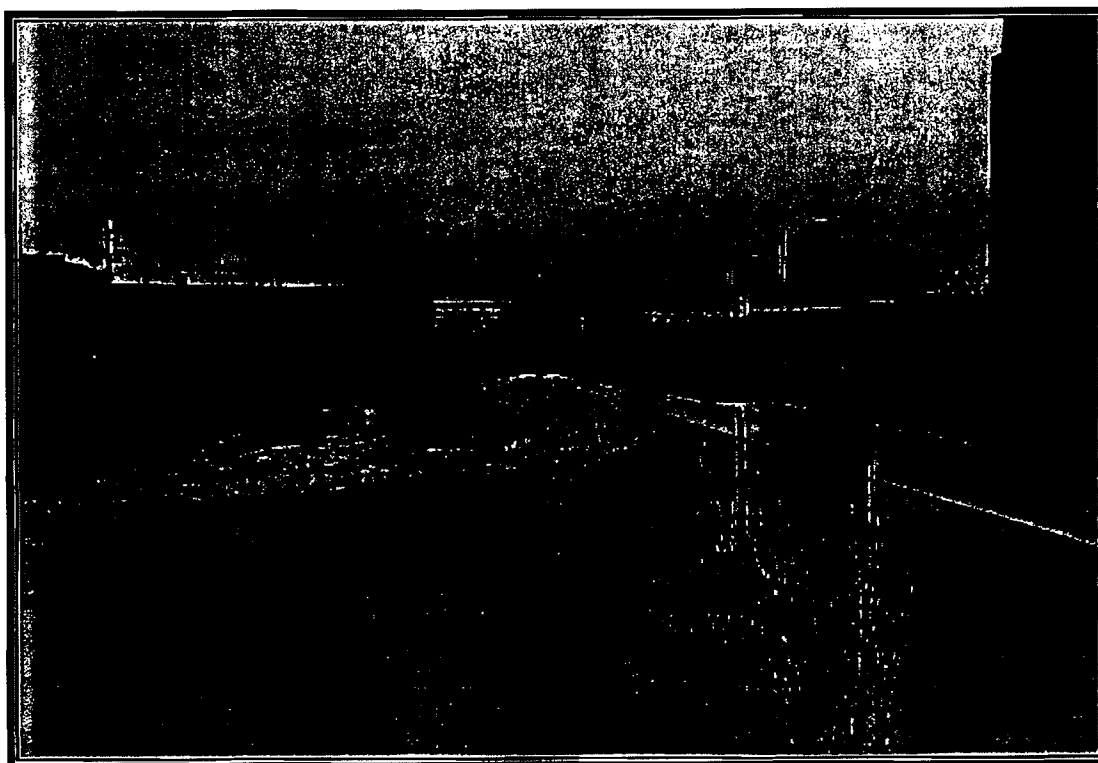


Photo 6: View looking to the east of the existing inactive railway spur located on-site. Pipe rack can be observed in the background located further to the east.

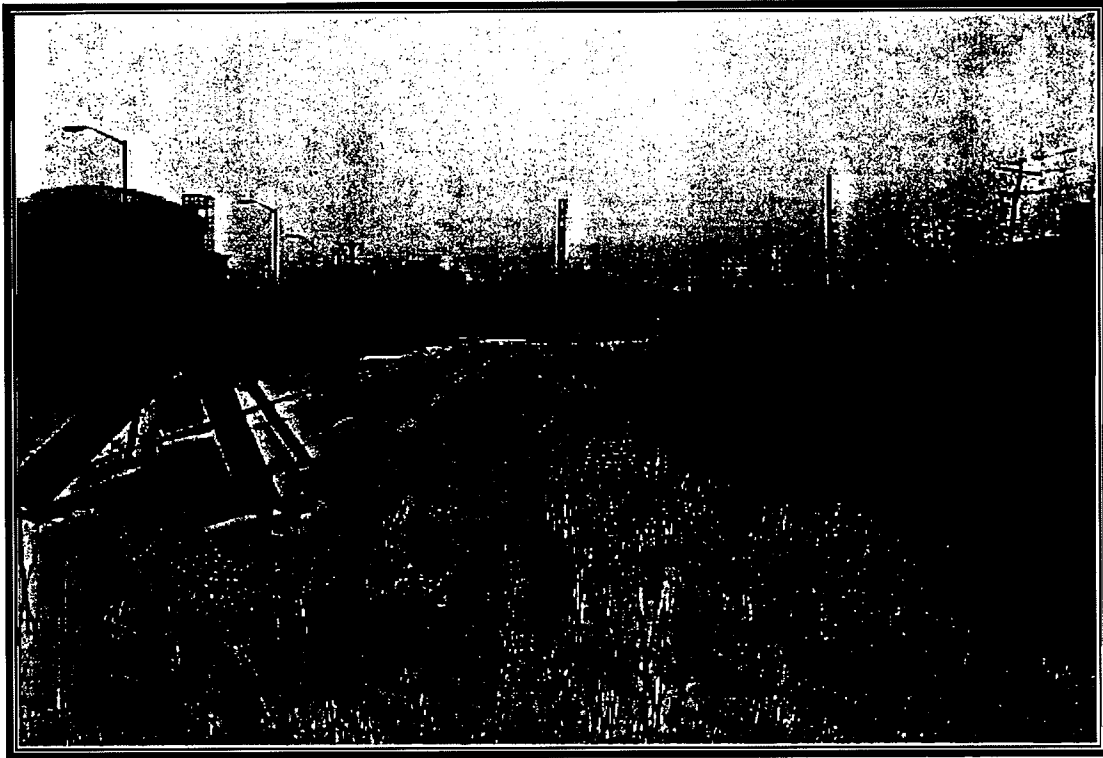


Photo 7: View looking northwest at the inactive railway spur located on-site.



Photo 8: View looking northwest at an upland area. This upland is located within the southeastern portion of the property adjacent to the inactive rail spur.

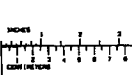


Photo 9: View looking west at the wetland associated with the inactive rail spur and wetland flags L6 and L7 .

APPENDIX D

SITE PLANS

ATTACHMENT VII – QUESTION 21 – SITE MAPS / ROW's



11-200-2000 (2-97-04)

REV	DESCRIPTION	DATE	BY	CHKD
1	ISSUED FOR CONSTRUCTION	11/20/00	WJH	WJH
2	REVISION	02/07/04	WJH	WJH
3	REVISION	02/07/04	WJH	WJH
4	REVISION	02/07/04	WJH	WJH

REV	DESCRIPTION	DATE	BY	CHKD
1	ISSUED FOR CONSTRUCTION	11/20/00	WJH	WJH
2	REVISION	02/07/04	WJH	WJH
3	REVISION	02/07/04	WJH	WJH
4	REVISION	02/07/04	WJH	WJH



11-200-E-M02001

PLAN
SECTION

A B C D E F G H

INDEX
1 2 3 4 5 6 7 8

11-20-2002 12:04:30

NO.	NAME	DATE	TIME	TYPE	STATUS
1	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
2	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
3	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
4	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
5	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
6	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
7	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
8	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30

NO.	NAME	DATE	TIME	TYPE	STATUS
1	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
2	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
3	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
4	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
5	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
6	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
7	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30
8	11/20/02	12:04:30	12:04:30	12:04:30	12:04:30

WA- 188-E-MO2002

LEGEND



DELMARVA POWER RFP
HAY ROAD UNITS 9 & 10
DETAIL, SHEET 2

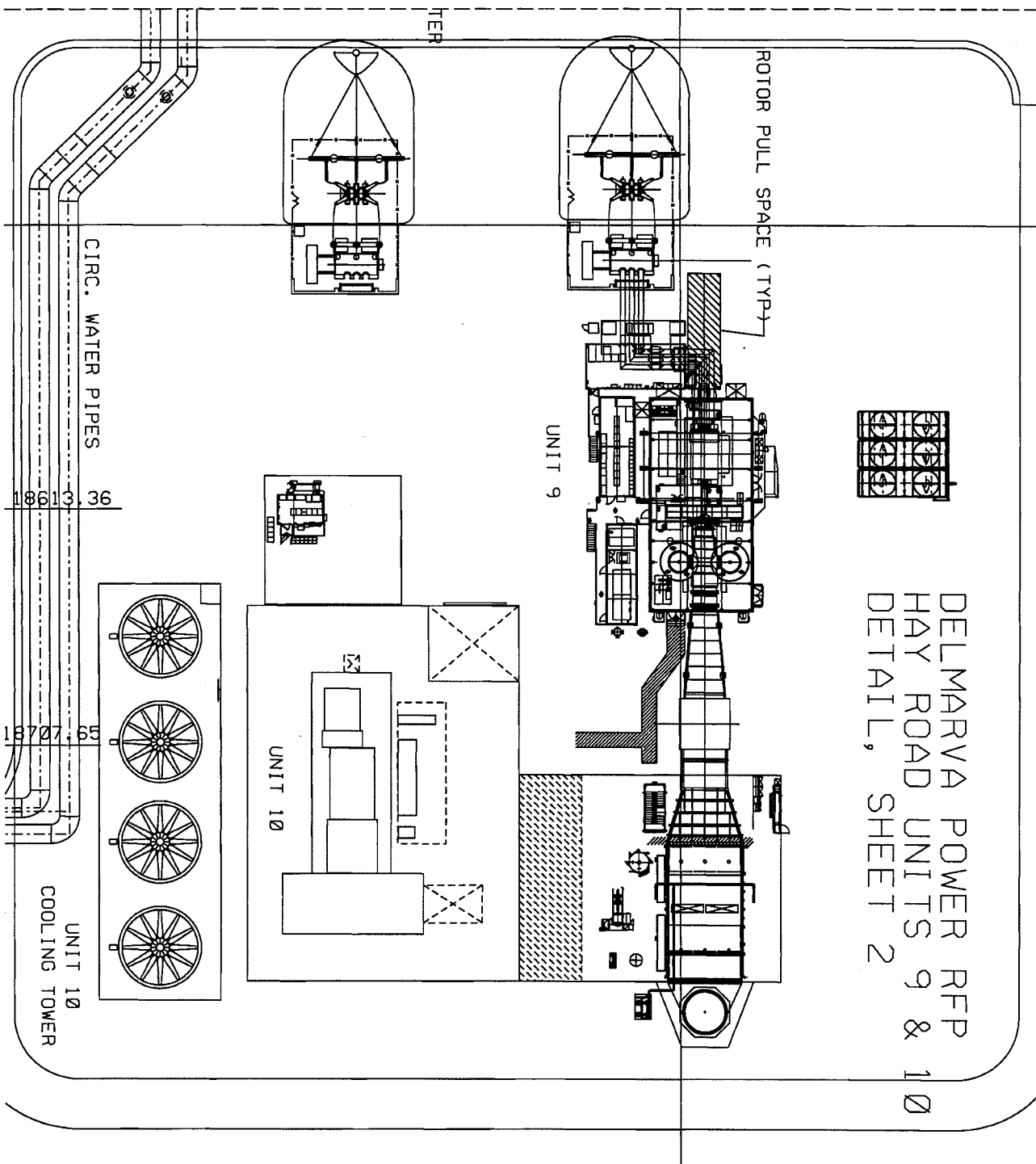
ROTOR PULL SPACE (TYP)

UNIT 9

UNIT 10

CIRC. WATER PIPES

UNIT 10
COOLING TOWER



ATTACHMENT VIII – QUESTION 23 – PROJECT PRO FORMA

[illegible][illegible]

Confidential

[illegible]

ATTACHMENT IX – QUESTION 34 – PROJECT VALUATION

[REDACTED]

[REDACTED]

[illegible][illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible][illegible]

ATTACHMENT X – QUESTION 36 – PPA REDLINE FOR BASE PROPOSAL